

Exhibit 9

Deposition Transcript of Thomas
Buchanan (May 15, 2018)
See Dkt. 60-9

1 THOMAS BUCHANAN - MAY 15, 2018

2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF TEXAS

4 DALLAS DIVISION

5 THOMAS BUCHANAN, on)

6 behalf of himself and)

7 all others similarly) CIVIL ACTION

8 situated,) NO.

9 Plaintiffs,) 3:17-CV-00728-D

10 v.)

11 SIRIUS XM RADIO, INC.,)

12 Defendant.)

13 VIDEO DEPOSITION OF THOMAS BUCHANAN

14 Dallas, Texas

15 Tuesday, May 15, 2018

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19
20
21 Reported by:

22 KIM A. McCANN, RMR, CRR, CSR

23 JOB NO. 140826

1 THOMAS BUCHANAN - MAY 15, 2018

2
3 May 15, 2018

4 9:05 a.m.

5
6 Video deposition of THOMAS BUCHANAN,
7 held at the offices of Jones Day, 2727 N. Harwood
8 Street, Suite 500, Dallas, Texas, pursuant to the
9 Federal Rules of Civil Procedure before Kim A.
10 McCann, Registered Merit Reporter, Certified
11 Realtime Reporter and Certified Shorthand
12 Reporter in and for the State of Texas.
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2 A P P E A R A N C E S:

3
4 HUGHES ELLZEY

5 BY: Jarrett Ellzey, Esq.

6 2700 Post Oak Blvd.

7 Houston, Texas 77056

8 Counsel for Plaintiffs

9
10
11
12
13 JONES DAY

14 BY: Lee Armstrong, Esq.

15 Allison Waks, Esq.

16 250 Vesey Street

17 New York, New York

18 Counsel for Defendants

19
20
21
22 ALSO PRESENT:

23 Tyler Theis, General Counsel, Sirius XM Radio

24 Connor Bynum, Videographer

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Defendant Sirius XM Holdings

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2 P R O C E E D I N G S

3 THE VIDEOGRAPHER: This is the start
4 of media labeled No. 1 of the video recorded
5 deposition of Thomas Buchanan in the matter of
6 Thomas Buchanan on behalf of himself and all
7 others similarly situated versus Sirius XM Radio,
8 Incorporated, in the United States District Court
9 of the Northern District of Texas, Dallas
10 Division, No. 3:17-CV-00728-E.

11 This deposition is being held Jones
12 Day in Dallas, Texas on Tuesday, May 15th, 2018,
13 at approximately 9:05 a.m. My name is Connor
14 Bynum. I am the legal video specialist from TSG
15 Reporting, Incorporated headquartered at 747
16 Third Avenue, New York, New York. The court
17 reporter is Kim McCann in association with TSG
18 Reporting.

19 Counsel, please introduce yourselves.

20 MR. ARMSTRONG: This is Lee
21 Armstrong. With me is Allison Waks of Jones Day.
22 We represent Sirius XM. Also with us is Tyler
23 Theis, who's the associate general counsel for
24 Sirius.

25 MR. ELLZEY: Jarrett Ellzey for the

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2 plaintiff and the class.

3 THE VIDEOGRAPHER: Will the court
4 reporter please swear in the witness.

5 THOMAS BUCHANAN,
6 having been first duly sworn, testified as
7 follows:

8 EXAMINATION

9 BY MR. ARMSTRONG:

10 Q. Good morning, Mr. Buchanan.

11 A. Good morning.

12 Q. Have you testified before?

13 A. No.

14 Q. This is the first time you've had
15 your deposition taken?

16 A. Yes. I've never been deposed.

17 Q. Okay. So there's various sort of
18 ground rules. I won't go through all of them
19 unless they're necessary, but one is it's
20 important, especially for Kim, that we not -- we
21 try our best not to talk over each other. Okay?

22 A. Okay.

23 Q. So I'll ask a question and then you
24 provide an answer, and we try to give Kim enough
25 time to get both of us down. Okay?

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2 A. Okay.

3 Q. All right. So you just took an oath
4 to tell the truth, right?

5 A. Yes.

6 Q. And it's to tell the whole truth,
7 right?

8 A. Yes.

9 Q. Will you do that today?

10 A. Yes.

11 Q. Do you understand the consequences of
12 not telling the truth?

13 A. Yes.

14 Q. And what are those consequences?

15 A. Jail.

16 Q. Okay. Have -- you have -- you've
17 sued Sirius in other matters, correct?

18 A. I've sued Sirius in small claims,
19 yes.

20 Q. All right. And you've submitted
21 documents in connection with those cases,
22 correct?

23 A. I did.

24 Q. And in this lawsuit here, you are the
25 named plaintiff, correct?

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2 A. So far, yes.

3 Q. Right. And you submitted documents
4 in this case as well, right?

5 A. Yes.

6 Q. And anything that you -- withdrawn.

7 You prepared for your deposition
8 today, right?

9 A. Yes.

10 Q. Tell us what you did, please.

11 A. Reviewed my notes, reviewed my
12 documents.

13 Q. Okay. What notes are you referring
14 to?

15 A. Documents that I provided my legal
16 team and that I'm sure has been provided to you.

17 Q. Okay. When you said a second ago you
18 reviewed your notes, reviewed your documents, is
19 there a difference between your notes and your
20 documents?

21 A. Yes.

22 Q. Okay. So what do you mean by your
23 notes?

24 A. The notes are basically the notes
25 that I've put together when I filed the small

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2 claims case outlining what occurred, the dates,
3 the times of the phone calls, the -- the overall
4 broad case that I presented to the Judge.

5 Q. Are those notes that you actually
6 wound up filing in those cases?

7 A. Absolutely.

8 Q. Okay. Did you review anything else?

9 A. No.

10 Q. Did you -- did you meet with any
11 attorney?

12 A. Other than my legal team, no.

13 Q. Okay. So who did you meet with to
14 prepare for your deposition?

15 A. I met with my -- my attorney.

16 Q. Who?

17 A. Jarrett.

18 Q. Okay. Anyone else?

19 A. No.

20 Q. And how many times did you meet with
21 Jarrett to prepare?

22 A. Well, we -- we met yesterday once to
23 outline basically what would happen, what a
24 deposition is.

25 Q. And you don't have to tell me what --

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2 A. Okay.

3 Q. And, in fact, you shouldn't because
4 that's privileged. Okay?

5 A. Okay.

6 MR. ELLZEY: Thank you.

7 Q. And how long -- was it Mr. -- Jarrett
8 is Mr. Jarrett Ellzey?

9 A. Yes.

10 Q. Okay. Was it just Mr. Ellzey?

11 A. Yes.

12 Q. And how long did you guys meet for?

13 A. At least two hours.

14 Q. Okay. Anybody else there?

15 A. My wife.

16 Q. All right. Anybody else?

17 A. No.

18 Q. Other than meeting for two hours, did
19 you talk with any other lawyers, either in person
20 or on the phone, to prepare for your deposition?

21 A. No.

22 Q. Okay. And you looked at various
23 documents yesterday, correct?

24 A. I did.

25 Q. Did you see anything in any of the

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2 materials that you reviewed that led you to
3 believe maybe you had made a mistake in anything
4 you had submitted to any court?

5 A. Absolutely not.

6 Q. Okay.

7 MR. ARMSTRONG: Kim, can you mark
8 this, please.

9 (Exhibit 1 was marked.)

10 Q. Mr. Buchanan, you've been handed what
11 we've marked as Defendant's Exhibit 1, the first
12 page of which is titled "Petition Small Claims
13 Case, Plaintiff Thomas Buchanan, Defendant Sirius
14 XM Holdings."

15 Do you see that?

16 A. I do.

17 Q. Okay. It's a multi-page document.
18 At the bottom it bears Bates numbers -- we call
19 those Bates numbers.

20 Do you see the lower right-hand
21 number?

22 A. Yes.

23 Q. It starts with XSM?

24 A. Yes.

25 Q. Okay. It bears the Bates XSM 2237

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2 through 2245. Okay. This is a -- you recognize
3 this document, right?

4 A. I do.

5 Q. And it is material that you prepared,
6 correct?

7 A. That's correct.

8 Q. And you wrote it to a judge; is that
9 right?

10 A. I did.

11 Q. And what judge was that?

12 A. I would have to look at my records to
13 determine the name of the judge. I don't recall
14 off the top of my head.

15 Q. What record would you look at to
16 determine that?

17 A. Some additional paperwork that I have
18 in the file.

19 Q. Okay. When you say "in the file,"
20 what -- what do you mean, in the file?

21 A. I have a file folder full of
22 documents.

23 Q. And do you have -- at home, do you
24 have an office in your house?

25 A. No.

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2 Q. Okay. Where do you keep this file
3 folder?

4 A. I keep it in my bedroom.

5 Q. All right. Is it -- do you have a
6 expanded file folder that has other files or just
7 -- is it just this one file?

8 A. No. It's an expanded folder, a file
9 system.

10 Q. You mean -- so -- so you keep other
11 things like bills, deeds, important papers?

12 A. No. It's only dedicated to this
13 particular issue.

14 Q. And when you say "this issue," you
15 mean the dispute you have with Sirius?

16 A. Yes.

17 Q. All right. When did you start
18 maintaining that file?

19 A. When the phone calls started coming,
20 I started recording the dates and the times of
21 the phone calls.

22 Q. Okay. And then you would put that
23 material and your notes in the file?

24 A. And I also have it on -- in
25 electronic version, yes.

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2 Q. What's the electronic version? Where
3 is that stored?

4 A. On my laptop.

5 Q. Okay. And how is that stored?

6 A. How is it stored?

7 MR. ELLZEY: Objection. Form.

8 A. I don't understand the question.

9 Q. Okay. Do you have a file
10 specifically dedicated to the Sirius XM dispute
11 on your laptop?

12 A. I have a file folder, electronic file
13 folder, yes, to group the documents together,
14 yes.

15 Q. Is that one folder, Mr. Buchanan?

16 A. No, it's multiple folders.

17 Q. And do you have a main folder?

18 A. Yes.

19 Q. And what's the title of that main
20 folder on your computer?

21 A. Probably something like "Sirius XM
22 Lawsuit."

23 Q. All right. And in connection with --
24 before you came here today, did you search all of
25 your electronic file folders?

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2 A. No.

3 Q. Okay. Did you search the paper file
4 folder that you maintained?

5 A. I reviewed some of the documents in
6 the paper file folder, yes --

7 Q. How --

8 A. -- to refresh my memory.

9 Q. How did you select what documents to
10 review in the paper file folder?

11 A. Just based on the type of document.

12 Q. Can you tell me what that means?

13 A. No, other than the fact that I looked
14 at the document and determined did I need to
15 refresh my memory or not. And if I thought I
16 did, I re-read the document.

17 Q. Okay. Tell me the things that you
18 thought you needed to refresh your memory on.

19 A. The dates, the times of the phone
20 calls, the -- you know, basically what you have
21 presented before me.

22 Q. Anything else?

23 A. No.

24 Q. Okay. Did you -- so then you didn't
25 turn that -- the contents of that paper file, all

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2 of them, over to your lawyer, right?

3 A. I believe my legal teams have copies
4 of everything that I have, electronic, paper, or
5 anything else. And if they -- if they don't, it
6 was purely an omission on my part, an accidental
7 omission. But I believe I provided everything.

8 Q. How did you provide it to them?

9 A. I mailed it.

10 Q. Okay. So -- but a second ago, you
11 told me that you did not go back and review your
12 electronic folders. Remember that?

13 A. I did not review every single
14 document electronically that I have.

15 Q. So you do have --

16 A. That's correct.

17 Q. -- documents that relate to this
18 dispute that you did not review and turn over to
19 your lawyers. Fair?

20 A. I don't have --

21 MR. ELLZEY: Objection. Form.

22 A. I don't -- I don't have documents. I
23 did not review all of the electronic documents.
24 It is incorrect for you to say that I failed,
25 neglected to turn them over to my attorney.

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2 Again, as far as I know, my attorney has copies,
3 either electronic -- in electronic form or on
4 paper form of every single document that I have.

5 Q. Let's break this down, Mr. Buchanan.

6 When I asked you how you sent these
7 documents to your lawyer, you said you mailed
8 them to him. Right?

9 A. That's correct.

10 Q. How many mailings were there?

11 A. There were several.

12 Q. All right. And this is -- when you
13 say "mail," you mean you used the U.S. Mail?

14 A. I did.

15 Q. All right. Did you ever send any
16 documents to your attorney electronically?

17 A. I could have emailed him electronic
18 documents as attachments. I don't recall.

19 Q. Just --

20 A. So I -- I don't -- I don't know the
21 answer to that. I -- I might have. We've had so
22 many communications back and forth that if he
23 asked for something and I had it in electronic
24 form, I'm sure I sent it to him as an attachment.

25 Q. It's just what you remember or what

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2 you know, not what you might have done. Okay?

3 A. That's correct. Okay.

4 Q. Okay. So in terms of those
5 electronic files, you sitting here can't tell me
6 what you actually emailed to your counsel; is
7 that fair?

8 A. I think that's fair, yeah.

9 Q. All right.

10 A. But I did make every effort to
11 provide every document, all of the information to
12 my legal team. I wanted them to have a copy of
13 everything that I have.

14 Q. Right. But you did not go in and
15 print out all of your documents from your
16 electronic folders and send them to counsel,
17 correct?

18 A. I don't recall if I did or not.

19 Q. Okay. If we look at this document,
20 this has been marked as Defendant's Exhibit 1.

21 A. Okay.

22 Q. Do you see on -- there's a grid of
23 calls and time of call and numbers --

24 A. Yes.

25 Q. -- called from.

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2 Do you see that?

3 A. Yes.

4 Q. Okay. And you prepared this entire
5 document, including this grid, right?

6 A. I did.

7 Q. All right. Below the grid, you say,
8 "Finally on July 29th, 2016, I called the phone
9 number that had been calling and was told that it
10 was Sirius XM Radio."

11 Do you see that?

12 A. Yeah.

13 Q. Did you write that?

14 A. I did.

15 Q. Was that true?

16 A. Yes.

17 Q. So you were advising the judge that
18 you found out on July 29th that Sirius XM Radio
19 had been calling you?

20 A. Yes.

21 Q. So that's the first time -- is it
22 fair to say that's the first time you learned the
23 identity of the caller?

24 A. I think that's fair to say that.

25 Yes.

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2 Q. Okay. Thank you.

3 MR. ARMSTRONG: Okay. Kim, can you
4 mark this as Defendant's 2, please?

5 (Exhibit 2 was marked.)

6 Q. Okay. We've marked -- we've marked
7 as Defendant's Exhibit 2 a letter on Thomas F.
8 Buchanan's letterhead dated July 24th, 2016, to
9 Sirius XM Holdings.

10 You've seen this letter before, sir?

11 A. I have.

12 Q. That's your signature?

13 A. Yes.

14 Q. Okay. What's the date of the letter?

15 A. July 24th.

16 Q. Now, you'll agree with me that
17 July 24th is before July 29th, correct?

18 A. I will agree with that, yes.

19 Q. Okay. So please explain to us then,
20 if you first learned that Sirius was calling you
21 on July 29th, how it is you sent a letter to
22 Sirius on July 24th.

23 A. Well, the explanation is pretty easy.
24 The list of phone calls that I have listed on
25 page 1 of Exhibit 1 is not an inclusive list of

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2 every phone call that I received from that
3 number. That's just when I started recording the
4 phone calls. There were actually many more than
5 these 16, 15 phone calls, but, you know, those
6 are the ones that I was able to document and
7 started documenting as of August the 4th.

8 Q. But, Mr. Buchanan, it could have been
9 a thousand phone calls. I'm just asking you in
10 light of your testimony that you learned for the
11 first time that it was Sirius that was calling
12 you on July 29th, how is it that you wrote a
13 letter on July 24th to Sirius?

14 A. I guess I don't understand the
15 question.

16 Q. You never sent that letter to Sirius,
17 did you?

18 A. Oh --

19 MR. ELLZEY: Objection. Form.

20 A. -- absolutely I did. As a matter of
21 fact, I mailed the letter on July 24th.

22 Q. What day of the week was that?

23 A. I don't know. I can look it up.

24 Q. Do you know -- what's your address,
25 please?

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2 A. 508 Oldbridge Drive, Allen, Texas.

3 Q. And where do you go -- where did you
4 go in July 2016 to mail items?

5 A. I go to the post office.

6 Q. Where? Which post office do you --

7 A. I -- I generally use the Allen,
8 Texas, post office.

9 Q. Is that open on a Sunday?

10 A. I don't believe so, no.

11 Q. Then how is it that you mailed this
12 because July 24th is a Sunday?

13 A. Well, I either did one of two things.
14 The Allen post office has a drop box in front of
15 the post office. I either dropped it in the
16 mailbox outside or the Allen post office -- even
17 though it's a Sunday, it leaves their doors open
18 so that residents can go in and drop the letters
19 inside through a slot.

20 Q. Okay. It's your -- on Defendant's
21 Exhibit 2, that's your handwriting in the upper
22 right-hand corner, correct?

23 A. Yes.

24 Q. And, now, you wrote another letter to
25 Sirius that we will look at in a few moments, and

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2 that was requesting -- actually, withdrawn.

3 You wrote another letter to Sirius
4 requesting its do-not-call policy, correct?

5 A. That's correct.

6 Q. And you sent that by certified mail,
7 return receipt requested?

8 A. If that's what I've put on the
9 document or -- then, yes.

10 Q. Well, it's one of the documents you
11 reviewed yesterday, isn't it?

12 A. It might have been. I don't recall.

13 Q. Only what you can recall.

14 A. Okay.

15 Q. Okay. But you didn't send this --
16 Defendant's Exhibit 2, you didn't send this by
17 certified mail, correct?

18 A. Based on my notation, no, it went
19 just first class, regular U.S. Mail.

20 Q. Why did you send one certified and
21 the other not certified?

22 A. Because the one I was requesting
23 information from the company, and I wanted to be
24 able to prove that I actually sent it -- sent --
25 sent the request to Sirius.

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2 Q. Okay.

3 A. And this letter before me dated
4 July 24th, I naively at that point assumed that
5 if you contact a company that's calling you two
6 and three times a week and you ask politely for
7 them to stop, that they'll -- they'll stop, and
8 you inform them that I'm on the do-not-call list,
9 I don't wish to receive phone calls from you,
10 that they'll agree to that request and -- and
11 cease.

12 Q. In -- let's mark another exhibit,
13 please.

14 MR. ARMSTRONG: Here you go, Kim.

15 (Exhibit 3 was marked.)

16 A. Not every document that I mail do I
17 send certified. But I can tell you subsequent to
18 these documents and these letters and other cases
19 and in other situations, yes, everything that I
20 -- I send out, I send out certified so that I can
21 prove the company actually received it.

22 Q. So at least with -- we'd agree then,
23 at least with Exhibit 2, you can't prove that the
24 company received it, correct? Is that fair?

25 A. That's a fair statement.

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2 Q. Okay. If you'll look at what we've
3 marked as Defendant's Exhibit 3 that's in front
4 of you. That's your complaint in this action.

5 And you've seen this before, correct?

6 A. I have.

7 Q. Okay. And in your complaint at
8 paragraph 23, if you would turn with me, you
9 discuss there internal do-not-call registries.
10 And you reference a period of 30 days. Would you
11 read that paragraph to yourself, and I'll have a
12 question.

13 (Witness reviewing document.)

14 A. Okay. I've read it.

15 Q. Okay. So what do you mean
16 "reasonable time not to exceed 30 days"?

17 MR. ELLZEY: Objection. Form.

18 Q. You can answer.

19 MR. ELLZEY: Yeah, just real quick.
20 From time to time, I'll be objecting --

21 THE WITNESS: Okay.

22 MR. ELLZEY: -- to some of the
23 questions. You can still answer the question,
24 unless I instruct you not to.

25 THE WITNESS: Okay.

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2 MR. ELLZEY: All right.

3 A. So the question is what does it
4 mean --

5 Q. In your --

6 A. -- the 30-day period to me? It means
7 that a corporation has 30 days to comply with a
8 request, and if I make the request to stop
9 calling me, they have up to 30 days to get that
10 programmed into whatever system or whatever call
11 center that they use so that those phone calls
12 will cease. I don't expect or I don't think
13 anyone would expect those phone calls to cease
14 overnight, and so they -- they are given a window
15 of time.

16 Q. So if we turn to page 7 of your
17 complaint. It's paragraph 34.

18 A. Okay.

19 Q. There's a list of the calls that
20 looks similar to the list we saw in Defendant's
21 Exhibit 1.

22 A. Okay.

23 Q. Okay. And you prepared this,
24 correct?

25 MR. ELLZEY: Objection. Form.

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2 Q. Did you prepare this list?

3 A. I did.

4 Q. Okay. And when do you claim you
5 transmitted your request to be placed on Sirius
6 XM's internal do-not-call list?

7 A. I did so based on the July 24th
8 letter.

9 Q. Even if you did so based on the
10 July 24th letter, can't we agree that according
11 to your list of calls, Sirius XM indeed did stop
12 calling you within 30 days?

13 A. Oh, I'd completely disagree.

14 Q. Okay. Can you tell me based on the
15 calls that you've pled here, which call falls
16 outside of the 30-day reasonable time period?

17 A. And as I stated before, I received
18 other calls that I did not document and -- on
19 this call list that is -- that were well outside
20 of the 30-day time period.

21 Q. How --

22 A. And -- and I -- I made the mistake of
23 not recording those, and that's clearly a mistake
24 that I made. I don't -- I don't record -- I
25 don't document every single phone call that I

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2 received, or I did not during that time period.

3 Q. Well, you requested records from your
4 carrier, didn't you?

5 A. I did.

6 Q. And your carrier was AT&T?

7 A. That is correct.

8 Q. And you reviewed -- because you
9 brought a federal case, you reviewed those
10 records carefully, right?

11 A. Yes.

12 Q. And from those records, that helped
13 you provide the list that you represented to the
14 Court, right?

15 A. Absolutely not.

16 Q. Okay. They didn't help you at all?

17 A. It did not help me document --
18 prepare this list. This list came from a
19 spreadsheet that I have in my possession of most,
20 not all, but most of the calls that I received.

21 Q. Okay. So when you write in
22 paragraph 34 that a "total of 16 telemarketing
23 calls were received," that's actually incorrect?

24 A. That's incorrect only from the
25 standpoint of I only documented on my spreadsheet

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2 16 of those calls. I, however, received many
3 more calls than those 16.

4 Q. But you didn't represent to this
5 federal court that you have documented more
6 calls; you represented that the total was 16
7 telemarketing calls?

8 A. I only documented 16 of those phone
9 calls.

10 Q. Tell me where in here you say
11 "documented." Where do you use that word?

12 A. I don't.

13 Q. Okay. So although you wrote "a total
14 of 16 calls," you now claim there were more than
15 16 calls. True?

16 A. I don't now claim it. I've claimed
17 it from day one when I filed the small claims
18 case.

19 Q. Well, let's look back at Exhibit 1 --
20 Defendant's Exhibit 1 when you wrote to this
21 Judge, right?

22 A. Yes.

23 Q. Okay. How many calls did you log
24 there for the Judge?

25 A. Sixteen.

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2 Q. Okay. So you're saying that again
3 when you wrote to this Judge, a different Judge,
4 you, again, did not accurately reflect all of the
5 calls?

6 A. And the only reason why I did not
7 include the other phone calls that I received --

8 Q. Yes, sir.

9 A. -- was I did not document those calls
10 on my spreadsheet. Had I documented the other 5
11 or 10 or 20 or whatever the amount of calls were
12 and I could go to my spreadsheet and say on this
13 date at this time, this number called me, then it
14 would be on this list. Okay.

15 Q. Well, how many were there? Were
16 there 5? Or were there 20? Or were there 40?

17 A. As I recall there were a considerable
18 number of phone calls.

19 Q. Okay. But you said to me a second
20 ago -- you told -- you testified that you did, in
21 fact, tell the courts in connection with these
22 other cases that there were additional calls.

23 Do you remember saying that?

24 MR. ELLZEY: Objection. Form.

25 Q. Yes?

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2 A. Yes.

3 Q. Okay. So show me where on this
4 document -- and I have others that you've
5 submitted to the Court -- I haven't seen anything
6 other than this list of numbers.

7 MR. ELLZEY: Objection. Form.

8 Q. Is there perhaps a document in one of
9 your files that you haven't produced?

10 A. No. Again, I stand by my comment of
11 I did not document in my spreadsheet the other
12 phone calls; otherwise, they would have been
13 listed on here.

14 Q. Have you ever alleged in a court
15 document anything more than the calls that you've
16 included here on Defendant's Exhibit 1?

17 A. Absolutely.

18 Q. Okay. Which -- which -- which case
19 was that?

20 A. In small claims.

21 Q. Okay. Have you produced to your
22 attorney all the documents you have related to
23 your small -- small claims cases?

24 A. To my knowledge, again, my legal
25 teams have all of the documents that I have.

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2 Q. Okay. There's actually a discrepancy
3 between these two lists, that is, the one that's
4 in the complaint and the one that's in
5 Defendant's Exhibit 1. One contains 15 calls;
6 another contains 16 calls.

7 Do you know why there's a
8 discrepancy?

9 A. I do not.

10 Q. Okay.

11 A. Three, two -- there appears to be a
12 discrepancy in the last entry. One is 7/18 and
13 one is 7/19. They could have been a typo for all
14 I know.

15 Q. Well, there's also -- on -- in the
16 complaint, paragraph 34, there's a reference to a
17 call on August 2, 2016, at 10:43 a.m. that I
18 don't see on Defendant's Exhibit 1?

19 A. That's correct.

20 Q. Okay. So according to -- if you look
21 at the complaint, paragraph 29, you write, "On
22 May 2, 2016, plaintiff purchased a 2011 Honda
23 Odyssey."

24 Do you see that?

25 A. What number?

1 THOMAS BUCHANAN - MAY 15, 2018

2 Q. It's paragraph 29 --

3 A. 29.

4 Q. -- of the complaint.

5 A. Okay. Yes.

6 Q. Is that true?

7 A. Yes.

8 Q. Okay. And then you have calls that
9 we looked at on paragraph 34, right?

10 A. That's correct.

11 Q. Okay. So after purchasing the
12 vehicle on May 2nd, you received the calls that
13 we reviewed in connection with that purchase; is
14 that fair?

15 A. Yes.

16 Q. And then at some point, you say that
17 you wrote a letter requesting that you be placed
18 on the internal do-not-call list, right?

19 A. Yes, that's correct.

20 Q. Okay. So did you get calls from any
21 other company in connection with your purchase of
22 the Odyssey?

23 A. No.

24 Q. So only Sirius called you in
25 connection with your purchase of the Odyssey?

1 THOMAS BUCHANAN - MAY 15, 2018

2 A. That's correct.

3 Q. And did you ever speak with Bob
4 Tedford -- anyone at Bob Tedford after you
5 purchased the Odyssey?

6 A. Regarding?

7 Q. Regarding anything.

8 MR. ELLZEY: On the phone? I'm
9 sorry, Counsel.

10 Q. (BY MR. ARMSTRONG) We -- we can start
11 with that. On the phone?

12 A. No, not to my knowledge.

13 Q. Okay. How about in person? This is
14 after you purchased the Odyssey.

15 A. I might have had a conversation with
16 them. I -- I don't recall.

17 Q. If we go back to Defendant's
18 Exhibit 1, please.

19 (Witness complies.)

20 Q. You prepared this on August --
21 withdrawn.

22 You submitted this on August 8, 2016,
23 right?

24 A. That's correct.

25 Q. And in writing to this Judge, were

1 THOMAS BUCHANAN - MAY 15, 2018

2 you trying to be as thorough and correct as you
3 could be?

4 A. I was.

5 Q. Okay. You don't reference in here,
6 though, the July 24th letter that we've marked as
7 Defendant's Exhibit 3 -- I'm sorry -- Defendant's
8 Exhibit 2?

9 A. And your -- is there a question there
10 or --

11 Q. I just -- in trying to be as thorough
12 as you can, is there any reason why you didn't
13 include the letter you claim to have sent to
14 Sirius on July 24th of 2016?

15 A. I have very little legal experience.
16 I could have accidentally omitted it. I could
17 have thought I included it and didn't. I can
18 think of a number of reasons.

19 Q. Just whatever you can recall.

20 A. So that's my response.

21 Q. Got it. You also told the Judge that
22 it would appear that Sirius XM purchased the DMV
23 list from the State?

24 A. At that point -- at that time that's
25 what I assumed had happened is they bought some

1 THOMAS BUCHANAN - MAY 15, 2018

2 DMV list.

3 Q. Were you right about that?

4 A. I was incorrect --

5 Q. Okay. Where did --

6 A. -- I have subsequently learned.

7 Q. How did you learn that?

8 A. Through --

9 MR. ELLZEY: Objection. Form.

10 Don't answer it if that information
11 came from your attorneys.

12 Q. Did you learn it on -- that -- all
13 right. I'll leave it.

14 At the time you told the Judge that,
15 "This is another case where a company purchased a
16 list from DMV," what proof did you have that that
17 was the truth?

18 A. I had no proof. It was just around
19 the time that I purchased the vehicle, and the --
20 the subsequent mailings that I started to receive
21 were styled in the same way of -- that I had the
22 title put in my wife's name. And so I -- I -- I
23 assumed that someone just bought a list.

24 Q. When you say the subsequent mailings
25 you started to receive, can you explain to me

1 THOMAS BUCHANAN - MAY 15, 2018

2 what you're talking about, Mr. Buchanan?

3 A. That I received -- that we started
4 receiving from Sirius offering us a free 30-day
5 or ever what the -- the time period was trial to
6 try their satellite radio.

7 Q. Are these paper mailings?

8 A. Yes.

9 Q. How many?

10 A. Several.

11 Q. And this is before you ever received
12 the first call from Sirius XM, correct?

13 A. No, that's incorrect.

14 Q. All of them were after you received
15 the first call?

16 A. Yes. To my knowledge, that's
17 correct.

18 Q. Well, let's just look at your
19 complaint. Okay?

20 A. Okay.

21 Q. You did review your complaint --

22 A. Yes.

23 Q. -- in connect -- just, again, for Kim
24 we need to make sure we wait for each other.

25 You did review your complaint to

1 THOMAS BUCHANAN - MAY 15, 2018

2 prepare for this deposition, right?

3 A. I did.

4 Q. Okay. So let's look at it together,
5 please. And that's Exhibit 3?

6 MS. WAKS: Yes.

7 Q. Okay. Do you see that in
8 paragraph 32, you advise the Court in this
9 federal court filing that "approximately a month
10 after the Odyssey purchase, a welcome kit from
11 defendant was delivered to plaintiff's
12 residence"?

13 Do you see that?

14 A. Yes.

15 Q. Was that a true statement?

16 A. To the best of my knowledge, yes,
17 that's a true statement.

18 Q. Okay. And you purchased it,
19 according to you, on May 2nd, right?

20 A. I would have to check the exact date.

21 Q. Well, sir, you've put it in a federal
22 court filing.

23 A. If that's what it says, then I assume
24 it's correct.

25 Q. Okay. Well, I -- I wouldn't -- it's

1 THOMAS BUCHANAN - MAY 15, 2018

2 your complaint.

3 A. Okay. Well, I'm just saying I -- I
4 don't recall the exact date of the purchase. If
5 it's a big deal, I'll be glad to check and see
6 the exact date.

7 Q. Okay. It is a big deal that we get
8 things right.

9 A. Okay. Well --

10 Q. -- so I want to make sure that --

11 A. -- I'm trying to get things right.

12 Q. I appreciate that.

13 A. Okay.

14 Q. Please let me finish my statement or
15 my question, okay, before you start so that we
16 don't talk over each other, okay. Is that all
17 right?

18 A. That's fine.

19 Q. Okay. So if you're correct in your
20 pleading, about a month after May 2nd, you
21 received a welcome kit from Sirius XM?

22 A. That's correct.

23 Q. So that's sometime in June, right?

24 A. That's correct.

25 Q. And you would agree with me that

1 THOMAS BUCHANAN - MAY 15, 2018

2 according to your calls that you plead in this
3 complaint, they don't begin until a time after
4 that, right?

5 A. The ones that I documented begin
6 July 18th.

7 Q. Right. So tell me the first time
8 that you received a call from anyone on behalf of
9 Sirius XM in connection with your purchase of the
10 Odyssey.

11 A. I can't do that. I -- as I said, I
12 did not document every call.

13 Q. Okay. You also received emails from
14 Sirius XM, correct?

15 A. I received one email from Sirius XM.

16 Q. Just one?

17 A. To my knowledge, yes.

18 Q. When was that?

19 A. Again, I would have to look at the
20 email to see the date.

21 Q. You opened that email, right?

22 A. I did, yes.

23 Q. Okay. And you clicked on a link,
24 correct?

25 A. I did not.

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2 Q. What did the email say?

3 A. I -- I would have to look at the
4 document.

5 Q. Do you have -- well, did you look at
6 it in connection with preparing for your
7 deposition?

8 A. I -- no, I don't recall reviewing
9 that.

10 Q. You still have it, though, right?

11 A. I'm sure I do.

12 Q. Okay. That's in that file you
13 mentioned?

14 A. Yes.

15 Q. Exhibit 2, please. That was the
16 July 24th letter.

17 A. Okay.

18 Q. What did you prepare this letter on?
19 Was it a computer?

20 A. Yes.

21 Q. Which computer?

22 A. My laptop computer.

23 Q. You've mentioned a laptop before. Is
24 that the same laptop we've been talking about?

25 A. Yes.

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2 Q. Okay. What kind of laptop is it?

3 A. It was a -- at that time a Toshiba.

4 Q. Don't have it anymore?

5 A. I basically have transferred the
6 files over to a different one.

7 Q. Where is the actual hardware, the
8 Toshiba?

9 A. It's at my home.

10 Q. Okay. And what did you tran -- when
11 did you make these transfer of files?

12 A. Several months ago.

13 Q. Okay. So whatever was on the Toshiba
14 is now on your new computer?

15 A. Yes.

16 Q. Okay. What kind of computer is that?

17 A. It's a generic-type computer.

18 Q. No brand name?

19 A. It's -- it's got some third party --
20 it's -- I don't recall.

21 Q. Okay. Do you own a home?

22 A. I do.

23 Q. And how do you get your mail? Is
24 there a mailbox?

25 A. Yes.

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2 Q. And are you -- you specifically -- or
3 does your wife -- who actually goes out to gather
4 the mail?

5 A. It varies, depending on the date.

6 Q. Is --

7 A. Generally my wife does.

8 Q. Okay. And then is there a place when
9 she or you bring it into the house where you guys
10 keep the mail?

11 A. No. We just set it on the counter in
12 the kitchen.

13 Q. That's where I do it is --

14 A. I mean --

15 Q. -- on the kitchen counter. Okay.

16 A. I mean, we don't have a designated
17 mail place, so...

18 Q. All right. So but typically you put
19 it on the kitchen counter?

20 A. Sure.

21 Q. And then is there a process by which
22 you go through and decide what to keep and what
23 to discard?

24 A. Yes.

25 Q. All right. And so do you -- like I,

1 THOMAS BUCHANAN - MAY 15, 2018

2 if there's junk mail, I toss it.

3 A. Uh-huh.

4 Q. Okay. And how do you define "junk
5 mail"?

6 A. How do I define junk mail?

7 Q. Well, let me ask -- let me ask it a
8 different way. Okay.

9 Is it fair to say if you -- if you
10 have a relationship with a company or a person,
11 you retain the mail and read it?

12 MR. ELLZEY: Objection. Form.

13 A. Yes.

14 Q. And if you don't, then you discard
15 it?

16 A. Except in the case of Sirius XM, when
17 I found out who was calling us, I instructed my
18 wife should we ever receive anything from Sirius
19 XM, it's to be given to me.

20 Q. And why is that?

21 A. Because I'm going after these
22 companies that are calling in violation of the
23 do-not-call list.

24 Q. Okay.

25 A. And I -- I want to keep in a file

1 THOMAS BUCHANAN - MAY 15, 2018

2 folder or I'm trying to keep in a file folder
3 every correspondence that I receive.

4 Q. When you say "these companies," which
5 companies are you referring to?

6 A. Right now it's Sirius XM.

7 Q. Any other?

8 A. Not at the moment, no.

9 Q. Have you ever sued another company
10 for violations of the do not call?

11 A. Oh, absolutely.

12 Q. Okay. How many?

13 A. Several.

14 Q. Which ones?

15 A. There was a window and door company.
16 There was just a door company that kept calling.
17 Those are the two that come to mind.

18 Q. Okay. What was the name of the
19 window and door company?

20 A. I would have to look at my notes.

21 Q. What notes would you be looking at?

22 A. The ones that I have at home.

23 Q. And how about the door company?
24 What's the name of that one?

25 A. Same thing. I'd have to --

1 THOMAS BUCHANAN - MAY 15, 2018

2 Q. When -- when were these lawsuits?

3 A. Within the past 24 months.

4 Q. Okay. And --

5 A. Not -- not all of these went to
6 court, though, so...

7 Q. Well, tell me what happened in each
8 of the -- the one against the window and door
9 company. Did you file a complaint?

10 A. In the window and door company, I
11 filed the complaint. I went to the local police
12 department, much like I did in the case of
13 Sirius, and had them find out who was calling,
14 the reason for the call, and went ahead and
15 submitted pretty much a summary to the Judge, as
16 I did in the Sirius case.

17 And the Judge -- and I'm assuming
18 this is what happened -- the staff, I assume,
19 contacted the company that was being sued and
20 said you need to call Mr. Buchanan and offer him
21 an out-of-court settlement because you're clearly
22 in violation, which they did, and made a offer,
23 and I accepted it.

24 Q. And how much was the offer?

25 A. Much -- much like what I did with

1 THOMAS BUCHANAN - MAY 15, 2018

2 Sirius XM. Your -- your attorney -- your legal
3 team contacted me and said would you be willing
4 to settle out of court?

5 Q. Okay. Are you finished?

6 A. Yes.

7 Q. How much did you settle that other
8 case for?

9 A. I believe it was 3,500.

10 Q. And how about the -- so that's the
11 window and door company, whatever its name is.

12 How about the door company case?
13 What happened to that?

14 A. It never went to trial.

15 Q. Right. Well, this other case didn't
16 go to trial either. So how did it resolve, if it
17 did?

18 A. It was dropped.

19 Q. Did you get any payment?

20 A. I did not.

21 Q. And why did you drop it?

22 A. I -- I don't recall off the top of my
23 head. There was some dispute as to some issue
24 that I raised, and so I -- I dropped it.

25 Q. Okay. So back to the -- the mail.

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2 So you -- when it comes to sorting the mail,
3 paying the bills, is that typically your
4 responsibility or Mrs. Buchanan's?

5 A. Mrs. Buchanan's.

6 Q. Okay. And do you -- is it customary
7 for you to discard mail just based on what's the
8 -- what's on the front cover of it?

9 A. No. Generally we open --

10 Q. Okay.

11 A. -- in general everything that we
12 receive and look at it.

13 Q. Okay. By "look at it," you actually
14 will read it?

15 A. We don't read every word of it. We
16 look at it to determine is it AT&T selling a
17 bundle or Verizon or -- or is it an important
18 document or is it just something that should be
19 discarded.

20 Q. And when you say "we," that's
21 essentially the way the Buchanans do it? That's
22 you and Mrs. Buchanan?

23 A. Yes.

24 Q. All right. Now, you did receive a
25 welcome kit from Sirius XM, correct?

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2 A. Yes.

3 Q. That's what you've pled in your case,
4 right?

5 A. If you call a -- a letter a -- a
6 welcome kit. Generally when I think of a wel --
7 welcome kit, it's a kit of items. This was just
8 a welcome letter pretty much.

9 Q. Well, when you say gift, it would
10 include items, what -- what do you -- what kind
11 of items?

12 A. It depends on what they're trying to
13 sell.

14 Q. Okay. Well, you -- you -- although
15 you didn't plead welcome kit, you did in
16 paragraph 32 of your complaint say that you
17 received a welcome package?

18 A. Yes.

19 Q. Okay. And you say that included in
20 there was a free trial offer, correct?

21 A. Yes.

22 Q. All right. So do you remember
23 actually seeing the welcome package that you're
24 referring to here?

25 A. Yes.

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2 Q. What did it look like?

3 A. What did it look like? It was just a
4 welcome offer for a set period of time to receive
5 free satellite radio.

6 Q. Okay. And then when -- and at the
7 time -- at the time you received this, you had
8 not received any of the calls that you've pled in
9 this complaint?

10 MR. ELLZEY: Objection. Form.

11 A. I'm confused as to the question.

12 Q. You testified before that you
13 received the welcome package sometime in
14 June 2016, right?

15 A. Okay.

16 Q. Right?

17 A. Yes.

18 Q. All right. And then we see from
19 paragraph 34 that the first of your documented
20 calls is July 19, 2016, correct?

21 A. That's correct.

22 Q. So at least according to your list of
23 calls that you've shared with the Court, that's
24 after you received the welcome package?

25 A. That's correct.

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2 Q. All right. Why did you save the
3 welcome package?

4 A. Because at that point, I wanted to
5 start saving -- or try to start save -- saving
6 everything that we received.

7 Q. Because you believe you had received
8 phone calls prior to receiving the welcome
9 package?

10 A. I can't prove it, but, yes.

11 Q. By the way, the calls that we see
12 that you have pled on paragraph 34 --

13 A. Yes.

14 Q. -- you never answered any of those,
15 right?

16 A. I attempted to. I'm an acute
17 diabetic. I was told to go home and rest. I was
18 sleeping or attempting to sleep 20 hours a day in
19 my battle against the diabetes. So what would
20 happen is Sirius XM or a call center that they --
21 that made the calls would call my home. I would
22 have to get out of bed, walk across the house,
23 get to the phone, pick it up, and they would hang
24 up.

25 Q. And then how did you know --

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2 A. So, no, I never actually spoke to
3 anyone, and they never actually left a message on
4 my machine saying we'd like to offer you a free
5 trial.

6 Q. Then how did you know it was coming
7 from Sirius or a company that employed --

8 A. Based on --

9 Q. -- that Sirius employed? I'm sorry.

10 A. Based on the Allen Police Department
11 and based on the phone call that I made to the
12 number that was calling me, they identified
13 themselves as Sirius XM.

14 Q. Now, you're aware Sirius XM can tell
15 whether consumers actually listen to Sirius XM.
16 Is that something you know or you don't know?

17 MR. ELLZEY: Objection. Form.

18 A. That's something I'm not aware of.

19 Q. Okay. When you purchased the car --
20 car on May 2, 2016, who was there that day? You
21 and your wife?

22 A. No, just myself.

23 Q. Okay. And you dealt with somebody
24 from Bob Tedford?

25 A. Yes.

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2 Q. Did you deal with one person or more
3 than one person?

4 A. More than one person.

5 Q. Do you remember any of their names?

6 A. No, not off the top of my head.

7 Q. Do you remember them talking to you
8 about anything having to do with Sirius XM?

9 A. No.

10 Q. Do you remember seeing any literature
11 in the dealership concerning Sirius XM?

12 A. No.

13 Q. And is it fair to say you do recall
14 seeing an XM button on the dashboard?

15 A. On the dashboard, yes, that's
16 correct.

17 Q. Okay. And after purchasing the
18 vehicle, you did push that button, correct?

19 A. I did.

20 Q. All right. And you listened to the
21 music. Fair?

22 A. No, absolutely incorrect.

23 Q. Okay. What did you do after you
24 pushed the button?

25 A. The button is not configured. It's

1 THOMAS BUCHANAN - MAY 15, 2018
2 not operational in the van. It -- it has never
3 been. It's not operational as of this moment.

4 Q. Okay. You still have that truck?

5 A. It's a van. And, yes, I -- I -- I
6 have a van.

7 Q. Okay. I'm sorry. I'll call it a
8 van. You still have that van?

9 A. Yes.

10 Q. The one you purchased from Bob
11 Tedford?

12 A. Yes.

13 Q. Okay. When did you push that XM
14 button?

15 MR. ELLZEY: Objection. Form.

16 A. I don't recall.

17 Q. Well, you bought it on May 2nd,
18 correct?

19 A. Uh-huh.

20 Q. And did you push it within days of
21 the purchase?

22 A. And, again, my response is I don't
23 recall.

24 Q. I'm just trying to see if you have
25 any recollection?

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2 A. No, I don't.

3 Q. Okay. Now, did you buy this van for
4 your wife?

5 A. I did.

6 Q. And does she typically use the van?

7 A. Yes.

8 Q. Is the title in her name?

9 A. I had the title put in her name, yes.

10 Q. Okay. And has she pushed the XM
11 button, to your knowledge?

12 A. No.

13 Q. Okay. When you say it was
14 unconfigured, what -- what exactly do you mean?
15 Can you tell me what you saw when you pushed the
16 button?

17 A. It was unresponsive.

18 Q. Any -- it's been a couple of years,
19 but any memory other -- other than that? Any
20 error message? Anything -- a number to call?

21 A. No, there were no numbers. There was
22 no L -- message on the LCD. There was nothing
23 displayed. It just did not work.

24 Q. Okay. Well, why did you push it?

25 A. I had no idea at that point what

1 THOMAS BUCHANAN - MAY 15, 2018

2 Sirius XM was.

3 Q. Had --

4 A. We were pushing a lot of buttons in
5 the van to try to figure out all of the features
6 and options.

7 Q. That's "we," you and Mrs. Buchanan?

8 A. Yes.

9 Q. When you saw that the XM was
10 unconfigured, did you contact anybody at Sirius?

11 A. Oh, no, I -- no.

12 Q. Okay. Did you contact anybody at the
13 dealer?

14 A. No.

15 Q. Okay. The number that you provided
16 -- you -- withdrawn.

17 You provided a phone number to Bob
18 Tedford, right?

19 A. Yes.

20 Q. Okay. And that phone number was your
21 landline?

22 A. Yes.

23 Q. Do you -- back in 2016, did you have
24 a cellphone?

25 A. We don't have cell phones.

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2 Q. Okay. So neither you nor your wife
3 have a cellphone?

4 A. No.

5 Q. So you use the landline as your phone
6 for all purposes?

7 A. That's correct.

8 Q. Just bear with me one second.

9 Okay. So when you -- when you went
10 to Bob Tedford to buy the ban -- the van, did you
11 go multiple times or just on one occasion?

12 A. As I recall, I went several times,
13 one to test drive it, and I went back
14 subsequently to make the purchase after I
15 determined that that's the one that I wanted to
16 purchase.

17 Q. And tell me, Mr. Buchanan. You dealt
18 with more than one person there?

19 A. Yes.

20 Q. But you can't remember their names?

21 A. No.

22 Q. Okay. No mention of Sirius XM?

23 A. No.

24 Q. And did you go to -- and that was a
25 used van that you purchased, right?

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2 A. That's correct.

3 Q. And had you -- say within the last
4 ten years, how many vehicles have you purchased
5 or leased?

6 A. My guess would have been -- would be
7 one. I mean, I could check.

8 Q. Okay. Right now, at your home you
9 have that van, right?

10 A. Yes.

11 Q. Any other vehicles at your house?

12 A. Yes.

13 Q. Okay. What?

14 A. My Chevy Impala.

15 Q. Okay. Any others?

16 A. No.

17 Q. All right. When did you acquire the
18 Chevy Impala?

19 A. After I -- I purchased the van. The
20 -- in -- in the same time period.

21 Q. Okay. Was that -- was that new or
22 used?

23 A. No, it's used.

24 Q. Okay. You -- you purchased it used,
25 correct?

1 THOMAS BUCHANAN - MAY 15, 2018

2 A. Yes.

3 Q. You didn't lease it?

4 A. That's correct.

5 Q. And where -- what dealer did you
6 obtain it from?

7 A. Same -- same dealer.

8 Q. Bob Tedford?

9 A. Yes.

10 Q. Did you deal with the same
11 salespeople?

12 A. Pretty much, yes.

13 Q. Is it two people? Three people?

14 A. I seem to recall two. There could
15 have been three.

16 Q. Can you describe the people at all?
17 Is it men? women?

18 A. No, they were men.

19 Q. Okay. All right. Okay. Before the
20 van -- the acquisition of the van, what was the
21 last time you had either leased or purchased a
22 vehicle?

23 A. It's been quite a while.

24 Q. Well, what were --

25 A. It's been longer than ten years.

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2 Q. I see. So what -- before
3 May 2, 2016, what vehicle was at your house, if
4 any?

5 A. We had a Villager, a van.

6 Q. Okay. Just the one?

7 A. Yes.

8 Q. And for how long had you had that? A
9 decade?

10 A. Oh, forever.

11 Q. You know what. We'll just stay with
12 that.

13 A. Okay.

14 Q. Any other -- besides the Villager,
15 any other -- withdrawn.

16 Have you ever leased a vehicle?

17 A. I don't think I've ever leased a
18 vehicle in my lifetime.

19 Q. Okay. Other than the Villager in the
20 last decade, had -- have you acquired any other
21 vehicle -- other than the Villager, the van, and
22 the Chevy Imp -- the -- withdrawn.

23 Other than the Villager, the Odyssey,
24 and the Chevy Impala?

25 MR. ELLZEY: Objection. Form. I --

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2 I can tell by the look on his face, I think you
3 need to try one more time.

4 MR. ARMSTRONG: Okay.

5 A. Well, no.

6 MR. ELLZEY: Okay.

7 A. My -- I guess my response is sure,
8 before my Chevy, I had a vehicle that I drove
9 that I actually can't recall what it was at the
10 moment, but sure.

11 Q. So you had -- at that point you -- at
12 some point, you had both the Villager and
13 whatever this --

14 A. Yeah.

15 Q. -- vehicle is?

16 A. Yeah.

17 Q. Okay. And do you recall when you
18 acquired that vehicle?

19 A. I -- I can check at DMV and let you
20 know when I changed the title. Do I recall right
21 off the top of my head, no.

22 Q. Is it 10 years? Is it a long time?

23 A. It's -- it's quite a while.

24 Q. Okay. In any -- before -- did any of
25 the other -- did any -- withdrawn.

1 THOMAS BUCHANAN - MAY 15, 2018

2 Any vehicle that you ever acquired
3 come equipped with Sirius XM?

4 A. In the past?

5 Q. Yes, both. Yes, in the past.

6 A. To my knowledge, no.

7 Q. How about satellite radio generally?

8 A. No.

9 Q. And you said in the past. Has
10 something happened recently where a vehicle you
11 acquired came equipped?

12 A. No.

13 Q. Okay. So never, Mr. Buchanan, have
14 you acquired a vehicle that's come equipped with
15 satellite radio?

16 A. That's correct.

17 Q. And that would be -- the same is true
18 for Mrs. Buchanan?

19 A. I'm -- I'm sure it is, yeah.

20 Q. Unless there's things you guys need
21 to talk about.

22 MR. ARMSTRONG: All right. Want to
23 take a -- take a five-minute break?

24 MR. ELLZEY: Sure.

25 THE VIDEOGRAPHER: We are off the

1 THOMAS BUCHANAN - MAY 15, 2018

2 record at 10:05 a.m.

3 (Break from 10:05 a.m. to 10:16 a.m.)

4 THE VIDEOGRAPHER: This is the start
5 of media No. 2 in the video recorded deposition
6 of Thomas Buchanan. We are on the record at
7 10:16 a.m.

8 Q. (BY MR. ARMSTRONG) Okay.

9 Mr. Buchanan, so you provided your home phone
10 number to somebody at Tedford, right?

11 A. Yes.

12 Q. And do you have any expectation as to
13 why they needed your home phone number?

14 A. No, not at all.

15 Q. Did you ask them not to share it with
16 anyone else?

17 A. I don't recall. I can tell you this:
18 That is -- it was my assumption that it would not
19 be shared with anyone for any reason without my
20 prior permission. Just as when I shared my email
21 address with them, I did not authorize them, nor
22 did I expect them to sell it, give it away, or
23 share it with any other entity.

24 Q. Okay. What -- would you have
25 expected a call after you purchased from Bob

1 THOMAS BUCHANAN - MAY 15, 2018

2 Tedford?

3 A. No.

4 Q. Would you -- you know what an EBR is,
5 don't you?

6 A. No.

7 Q. We'll look at some of the documents.
8 Did you ever research what an
9 established business relationship is?

10 A. Oh, I'm aware of what an established
11 business relationship is.

12 Q. Well, is at times maybe you haven't
13 heard this acronym known as EBR?

14 A. I had not heard the acronym, yes.

15 Q. Okay. What is your understanding of
16 established business relationship?

17 MR. ELLZEY: Object to the form.
18 Object to the extent it calls for a legal
19 conclusion. If you don't mind, I'm going to get
20 a running objection on the record just as to all
21 questions related to EBR, to the extent they call
22 for a legal conclusion. He's not a lawyer.

23 Q. Let's -- let's break it down. So
24 before -- what your counsel is trying to prevent
25 is that whatever you guys have discussed together

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2 about this issue with EBR, that you not share
3 with me what he or other lawyers of counsel give
4 about in the case.

5 So what I want to do, if we can, and
6 if we can't, you'll tell me, is before you ever
7 engaged this fine attorney, you did some of your
8 own research on established business
9 relationship?

10 A. Yes.

11 Q. Okay. What did do you?

12 A. I looked at the law.

13 Q. How did you find the law?

14 A. I went to the local law library in
15 Collin County.

16 Q. Okay. And what did do you there,
17 sir?

18 A. Did the research and pulled up the
19 law and read it.

20 Q. And the law you're referring to is
21 what?

22 A. I'd have to, again, view the document
23 that I looked at. I looked at several laws.

24 Q. Okay.

25 A. Okay.

1 THOMAS BUCHANAN - MAY 15, 2018

2 Q. And part of that included reading
3 about established business relationships, right?

4 A. That's correct.

5 Q. And at some point you commenced a
6 small claims proceeding against Sirius, right?

7 A. Yes.

8 Q. And it was your opinion, without
9 having consulted any attorneys, that Sirius did
10 not have an established business relationship
11 with you. Fair?

12 A. That's correct.

13 Q. Okay. Based on your reading, not
14 your discussions with counsel --

15 A. Yes.

16 Q. -- what's your understanding of what
17 an established business relationship is?

18 A. It's my understanding that an
19 established business relationship is where I
20 would go to Sirius XM's website and click on a
21 please have someone contact me, I'm interested in
22 buying satellite radio. Or I would -- I would
23 fill out a postcard and send it to the company
24 and say, I'm interested in what you're offering,
25 I'd like to sign up for a 90-day free trial.

1 THOMAS BUCHANAN - MAY 15, 2018

2 Q. Okay. Anything else, just in
3 general?

4 A. Not in general, no.

5 Q. So for people who may have done that,
6 say a person has gone to a website and clicked on
7 Sirius XM and is interested in the free trial --

8 A. Yes.

9 Q. -- those people would have, in your
10 mind, an established business relationship?

11 MR. ELLZEY: Objection. Form.

12 A. Yes.

13 Q. Okay. And Bob Tedford, you made a
14 purchase at Bob Tedford, correct?

15 A. That's correct.

16 Q. Did you believe you had an
17 established business -- business relationship
18 with Bob Tedford?

19 MR. ELLZEY: Objection. Form.

20 A. As it relates to the van, yes.

21 Q. Okay. And would you have expected
22 calls from Bob Tedford about the van?

23 A. No.

24 Q. So what if Bob Tedford had called you
25 offering a warranty after your purchase?

1 THOMAS BUCHANAN - MAY 15, 2018

2 A. I would have told Bob Tedford that
3 I'm not interested, and to please stop calling.

4 Q. But to your mind, would that first
5 call have been a violation of the do-not-call
6 laws?

7 MR. ELLZEY: Objection. Form.

8 A. It could have been, yes, absolutely.

9 Q. So is it fair to say that unless you
10 specifically gave consent to use your number to
11 call you, that no company or person should call
12 you?

13 MR. ELLZEY: Objection. Form.

14 A. Absolutely.

15 Q. Okay.

16 MR. ARMSTRONG: All right. Let's
17 mark another exhibit, please.

18 (Exhibit 4 was marked.)

19 Q. So this is -- we've marked
20 Defendant's Exhibit 4. It's a document that was
21 produced by your attorneys, Mr. Buchanan, and it
22 bears Bates stamp P, a bunch of zeros, 2 through
23 6.

24 Have you ever seen this document
25 before?

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2 A. Yes.

3 Q. Okay. And what is this?

4 A. This is a call detail log from AT&T
5 of the incoming calls for a certain time period.

6 Q. These are incoming calls to your
7 residential landline?

8 A. That's correct.

9 Q. And during the period that this
10 covers, that is October 1st, 2014 to
11 October 31st, 2016, was AT&T your only carrier
12 for that landline?

13 A. That's correct.

14 Q. All right. And had you asked AT&T to
15 query for records in this time frame?

16 A. I subpoenaed these records from AT&T.

17 Q. All right.

18 A. They did not willingly provide them.

19 Q. The "16 calls," whose handwriting is
20 that?

21 A. That's mine.

22 Q. All right. So in reviewing whatever
23 it is AT&T sent you for this time period, you
24 wrote "16 calls," correct?

25 A. That's correct.

1 THOMAS BUCHANAN - MAY 15, 2018

2 Q. What did you mean by "16 calls"?

3 A. That means that I was able during
4 this time period to document 16 different
5 occasions where Sirius XM called me.

6 Q. Okay. And in -- and I see that
7 there -- certain numbers are highlighted in
8 yellow.

9 Do you see that?

10 A. I do.

11 Q. Are those the calls?

12 A. Yes.

13 Q. Okay. So your only carrier for the
14 period of time that we've been discussing
15 provided you this document and you were able to
16 identify 16 calls, correct?

17 A. That's correct.

18 Q. But you claim during this period
19 there were more -- more calls from Sirius XM?

20 A. No, that's not what I said.

21 Q. Okay. During this period of time,
22 October 1st, 2014 to October 31st, 2016, were
23 there more than these 16 calls --

24 A. No.

25 Q. -- from Sirius XM?

1 THOMAS BUCHANAN - MAY 15, 2018

2 A. No.

3 Q. Okay.

4 A. There were other calls outside of
5 that time period that I received.

6 Q. Okay. But within the time period,
7 these are the calls?

8 A. Within that specific time period, I
9 was able to document a minimum of 16 calls,
10 that's correct.

11 Q. Okay. So at least within -- you
12 didn't receive a call prior to October 1st, 2014
13 from anybody on behalf of Sirius, correct?

14 A. And again, I have received more phone
15 calls than these 16 calls. I did not document
16 the dates and the times. It could have been
17 outside of that time period, yes.

18 Q. Just what you know, sir. So you
19 believe you may have received from Sirius XM or
20 somebody on its behalf a phone call prior to
21 October of 2014?

22 A. I could have, yes.

23 Q. But you just don't know?

24 A. I did not document, so I do -- I do
25 not know.

1 THOMAS BUCHANAN - MAY 15, 2018

2 Q. Okay. And -- but during this period,
3 based on the records of your only carrier, we
4 know how many you can document, correct?

5 A. That's correct.

6 Q. All right. And I will tell you that
7 looking at this and looking at the list you had
8 before, these calls do not begin until a month
9 after you received that welcome kit.

10 Do we agree with that?

11 MR. ELLZEY: Objection. Form.

12 A. I agree with that, yes.

13 Q. Okay.

14 A. Even though I -- as I have stated, I
15 received calls prior to receiving that welcome
16 kit that I did not document on my spreadsheet
17 that are not documented on Exhibit 1, page 1.

18 Q. And not documented by your carrier's
19 list of all of the calls from this number to you
20 during this period of time?

21 A. No, that -- that's incorrect, your
22 statement.

23 Q. Okay. Well, let's correct it then.
24 During this period of time --

25 A. And again, it's the "during this

1 THOMAS BUCHANAN - MAY 15, 2018

2 period of time." During this period of time I
3 received these 16 phone calls.

4 Q. Right.

5 A. We're talking about outside of that
6 period of time.

7 Q. Okay. What's the period of time
8 during which you received these 16 phone calls?

9 A. Well, based on this document, it is
10 from 10/1/14 to 10/31/16.

11 Q. Okay. And how many calls did you
12 receive from or on behalf of Sirius XM during
13 that period of time?

14 A. 16 phone calls.

15 Q. Okay. And prior to that period, how
16 many calls did you receive?

17 A. Numerous calls --

18 Q. Okay. So --

19 A. -- that I did not document on my
20 spreadsheet that are not included on Exhibit 1,
21 page 1.

22 Q. Mr. Buchanan, let me just finish. I
23 know it's not a natural thing. Just let me
24 finish the question so that we can get a clear
25 record. Okay.

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2 Prior to this period of time, how
3 many calls did you receive -- and by the way,
4 "prior to this period of time" means prior to
5 October 1st, 2014 -- how many calls did you
6 receive by or on behalf of Sirius XM?

7 A. And my response is I did not document
8 the calls. I received several calls.

9 Q. That's what I'm trying -- so several?

10 A. Yes.

11 Q. 2014 and prior, you received several
12 from Sirius XM?

13 A. Outside of this time period.

14 Q. That's -- we're talking about before
15 this time period. In a second I'm going to talk
16 about after this time period.

17 A. Okay.

18 Q. But right now, we've talked about the
19 time period, right?

20 A. Okay.

21 Q. Now, prior to the time period, prior
22 to October 1st, 2014, what's your estimation as
23 to how many calls you received from Sirius XM?

24 A. I did not document the calls that I
25 received before nor after, but I did receive

1 THOMAS BUCHANAN - MAY 15, 2018

2 several calls.

3 Q. Even if you didn't document, how many
4 calls? A thousand?

5 A. Not a thousand.

6 Q. Your best estimate?

7 A. My best guess?

8 Q. Yeah.

9 A. I would say 10, 15.

10 Q. And that's before this period?

11 A. Before and after this per- -- this
12 period of the 16 documented phone calls, that's
13 correct.

14 Q. And -- okay. And did you -- if
15 that's the case, why did you ask AT&T to query
16 only during this period?

17 A. Because at the time that I created
18 the subpoena, I looked at my spreadsheet and I
19 looked at the time period where I had documented
20 the phone calls, and it's that time period --
21 that's the time period I asked for.

22 Q. Okay. The ones -- the calls that
23 you're telling us about now, either before or
24 after the period, how did you know they were
25 coming from Sirius XM?

1 THOMAS BUCHANAN - MAY 15, 2018

2 A. I assumed based on the number, or the
3 LCD.

4 Q. And what number was that?

5 A. I assume the same number. I don't
6 know. Again, I didn't write it down. I didn't
7 document it.

8 Q. How did you know the number? Did it
9 show up on your home phone?

10 A. Yes.

11 Q. Okay. And is it the same number as
12 in these records?

13 A. I can't testify to that.

14 Q. Only --

15 A. Many -- many call centers use many
16 different numbers. So I don't know.

17 Q. Okay. Did the -- any of the other
18 cars -- you said you purchased another car
19 shortly after -- another vehicle shortly after
20 the purchase of the Odyssey, correct?

21 A. That's correct.

22 Q. And did that come equipped with
23 Sirius XM or any satellite radio?

24 A. And as I have stated before to your
25 question, no other vehicle that I have owned in

1 THOMAS BUCHANAN - MAY 15, 2018

2 my lifetime, to my knowledge, has had Sirius XM
3 as a feature.

4 Q. Did you receive any calls from anyone
5 in connection with your purchase of any other
6 vehicle?

7 A. Absolutely not.

8 Q. Have you ever spoken with anyone at
9 Sirius or on behalf of Sirius?

10 A. When I initially called the number
11 that was calling me to find out who was calling,
12 they identified themselves as Sirius XM.

13 Q. Tell me everything you can recall
14 about that phone call.

15 A. The only recollection I have is
16 generally to find out who's calling. I called
17 the number back. I listened to the receptionist
18 who picks up the phone and says, this is Sirius
19 XM, may I help you, and that tells me who called.

20 Q. And --

21 A. And I say thank you and I hang up.

22 Q. Okay. And that's the first and only
23 time you've ever done that?

24 A. Yes. I -- I didn't know Sirius XM
25 existed before the phone calls.

1 THOMAS BUCHANAN - MAY 15, 2018

2 Q. So even back in 2014 and before, when
3 you were receiving these calls that you claim you
4 recalled -- remembered from Sirius XM, you did
5 not call the number and find out that it actually
6 was Sirius XM?

7 A. That's correct.

8 Q. Is it possible you're just wrong, it
9 wasn't Sirius XM?

10 A. You know, anything's possible, sure.

11 MR. ARMSTRONG: Okay. Let's mark
12 this.

13 (Exhibit 5 was marked.)

14 Q. Okay. We've marked as Defendant's
15 Exhibit 5, a letter that's addressed to Deborah
16 Buchanan, the top right-hand which says,
17 "Welcome" with an exclamation point. You've seen
18 this letter before, correct?

19 A. I have.

20 Q. All right. Is this the -- in
21 Paragraph 32 of your complaint -- and I'll give
22 you a second to get there. Take your time. And
23 please review 32, and then the question I have
24 is: Is this the free trial offer that you're
25 referring to in Paragraph 32?

1 THOMAS BUCHANAN - MAY 15, 2018

2 A. It is.

3 Q. Okay. So who opened the welcome kit?

4 A. I don't recall. It could have been
5 me. It could have been my wife.

6 Q. Did you both read this letter?

7 A. I know I did. I -- I can't testify
8 to whether she read it or not.

9 Q. Of course. Okay. So then you see
10 that it says, "Your new Honda Odyssey includes a
11 3-month trial subscription."

12 Do you see that?

13 A. Yes.

14 Q. So that told you that you already had
15 the trial subscription?

16 MR. ELLZEY: Objection. Form.

17 A. That told me that we were being
18 offered a free trial. It doesn't mean that we
19 requested it. It doesn't mean that we asked for
20 it. It doesn't mean that we wanted it.

21 Q. Fair enough. But you do see that, at
22 least according to this letter, it advises you
23 that it is already active and ready for you to
24 enjoy?

25 A. Based on this letter, that's correct.

1 THOMAS BUCHANAN - MAY 15, 2018

2 Q. Okay. And then you see down below
3 the blue legend, it says, "Important information
4 about your trial." The middle says, "How we
5 communicate."

6 Do you see that?

7 A. Uh-huh.

8 Q. It says, "Sirius XM may contact you
9 by mail, phone, or email to discuss subscription
10 options."

11 Do you see that?

12 A. Uh-huh. That's correct.

13 Q. Now, you read that at the time,
14 right?

15 A. I'm sure I did.

16 Q. Okay. And did you ever contact
17 Sirius XM to indicate any preference you've had
18 for either not being contacted or contact by
19 email or anything else?

20 A. I sent them an email -- or I sent
21 them a letter saying, please don't contact me.

22 Q. That's the July 24th --

23 A. Yes.

24 Q. -- letter, correct? Okay.

25 So if you received this in June --

1 THOMAS BUCHANAN - MAY 15, 2018

2 sometime in June, it wasn't until the end of July
3 that you sent them that letter?

4 A. I don't recall when I actually
5 received this. I can -- I can say that Sirius is
6 very smooth in that they didn't -- they -- that I
7 don't recall them ever dating any of the
8 propaganda that they sent regarding their
9 product.

10 Q. Where --

11 A. There are -- there are no dates on
12 anything that they sent.

13 Q. Well, you'll see on this page, right,
14 it says, "Your account information," and it has a
15 radio ID and it says, "The trial end date is
16 August 2nd, 2016."

17 Do you see that?

18 A. And my response to that is I receive
19 offers from Verizon, I've -- I just received an
20 offer from AARP saying, you have a free
21 subscription for X number of days, here's a dummy
22 little card that you can use. It -- it doesn't
23 mean I requested it. I doesn't mean I'm going to
24 use it. It doesn't mean that we asked for it.

25 Q. So you were offered a free trial to

1 THOMAS BUCHANAN - MAY 15, 2018

2 AARP?

3 A. Yes.

4 Q. Okay. Did you have -- do you have a
5 relationship with AARP?

6 MR. ELLZEY: Objection. Form.

7 A. No.

8 Q. Did AARP ever call you?

9 A. No.

10 Q. How about Verizon, do you have any
11 sort of --

12 A. No.

13 Q. -- business relation -- just so Kim
14 can get it down, do you have any sort of business
15 relationship with Verizon?

16 MR. ELLZEY: Objection. Form.

17 A. No.

18 Q. Okay. Has Verizon ever phoned you?

19 A. No.

20 Q. Have you ever availed yourself of a
21 free trial to any service for a product?

22 MR. ELLZEY: Objection. Form.

23 A. Not to my knowledge that I can
24 recall, no.

25 I might also add here that I didn't

1 THOMAS BUCHANAN - MAY 15, 2018

2 know what Sirius XM was. I would never use
3 Sirius XM. I wouldn't -- I wouldn't sign up for
4 a free trial for Sirius XM, not because it's a
5 bad product, only because I think people are very
6 foolish who do that. There are hundreds of
7 thousands of radio stations that are free.

8 People in today's world sign up and
9 pay \$100 a month for cable TV and they get their
10 hundred channels that they buy every -- every
11 30 days.

12 Q. Right.

13 A. I -- I paid \$39 for an antenna. I
14 have free TV at home. I just -- it's not a
15 product that I would ever be interested in.

16 Q. Understood.

17 A. And even if the button had worked in
18 the van, which it has never, does not, nor do I
19 ever want it turned on, I wouldn't use it. Why?

20 Q. Can we at least agree, though,
21 Mr. Buchanan, that not everyone is like you.
22 Fair?

23 A. There are many people that waste
24 their money, yes, we agree.

25 Q. Okay. So many people will take

1 THOMAS BUCHANAN - MAY 15, 2018

2 advantage of the trial subscription to Sirius XM,
3 right?

4 MR. ELLZEY: Objection. Form.

5 A. There's an idiot born every moment,
6 yes.

7 Q. Okay. And some people will pay for
8 it, because unlike you, they actually enjoy the
9 service, right?

10 MR. ELLZEY: Objection. Form.

11 A. Obviously, or the company wouldn't be
12 in business.

13 Q. Right. And there are people who
14 would push the button and avail themselves of the
15 service during the free trial --

16 MR. ELLZEY: Objection. Form.

17 Q. -- even though you did not?

18 A. I assume so.

19 Q. And not everybody has -- what kind of
20 music do you like to listen to?

21 A. I like all kinds of music.

22 Q. Is there any particular kind you like
23 the most?

24 A. I like everything from country
25 western to oldies and everything in between.

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2 Q. How about Mrs. Buchanan? What are
3 her musical tastes?

4 A. I would say she likes country and
5 western and maybe a little classic.

6 Q. Do you think that is the same as
7 everyone else who was offered a free trial, that
8 their music tastes are precisely what yours and
9 Mrs. Buchanan's are?

10 MR. ELLZEY: Objection. Form.

11 A. No, I don't.

12 Q. I mean, the fact is you can't say
13 what their tastes are, right?

14 A. That's correct.

15 Q. And you can't testify as to what
16 their dealings were when they went to purchase
17 their own cars?

18 MR. ELLZEY: Objection. Form.

19 A. That's correct.

20 Q. So you don't know what those people
21 discussed with the salespeople in terms of Sirius
22 XM, if anything?

23 MR. ELLZEY: Objection. Form.

24 A. That's correct. I wasn't there.

25 Q. Right. Now, the welcome package and

1 THOMAS BUCHANAN - MAY 15, 2018

2 this letter that we've looked at, Defendant's
3 Exhibit 5, where have you kept that?

4 A. Can I interject a comment at this
5 point regarding Exhibit 5 that you just handed
6 me, how we communicate?

7 Q. I'd normally say no, but sure.

8 A. Okay. It said Sirius XM may contact
9 you by mail, phone, or email to discuss
10 subscription --

11 Q. Subscriptions, yeah.

12 A. -- options. I -- I would not -- you
13 know, I object to the phone calls, but I also
14 object to them not leaving a message on the
15 answering machine.

16 Q. And why is that, sir?

17 A. Because any corporation or individual
18 selling a product, if you're not at home, should
19 leave a message. And to continually call my home
20 day after day, week after week and not -- not
21 communicate, you know, hang up after four rings
22 or three rings, whatever it is, it's wrong.

23 Q. Okay. So you --

24 A. It's harassment.

25 Q. So you would have rather that they

1 THOMAS BUCHANAN - MAY 15, 2018

2 actually communicate about their service?

3 A. Yes.

4 Q. Okay. And -- all right. Have you
5 finished your comment?

6 A. Yes.

7 Q. Okay. So after you purchased the van
8 from Bob Tedford and you receive this welcome
9 kit --

10 A. Yes.

11 Q. -- you received calls from Sirius XM,
12 correct?

13 A. Yes.

14 Q. All right. From Sirius XM's
15 perspective, do you have any understanding of why
16 they were trying -- why they were trying to reach
17 you?

18 A. I had no idea. All I knew is a
19 certain number kept calling my home and
20 interrupting my rest and my sleep. At no time
21 have I ever talked to a Sirius XM employee except
22 when I called the number and had the receptionist
23 say, this is Sirius XM, and I said, thank you,
24 and hung up. And at no time have they ever left
25 a message.

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2 Q. Even though the -- the calls
3 interrupted your sleep, do you think from Sirius
4 XM's perspective, it was reasonable to think you
5 might have expected a call? Is that fair?

6 MR. ELLZEY: Objection. Form.

7 A. No, absolutely not.

8 Q. Okay. Did you ever, when you -- have
9 you ever until today called back Bob Tedford
10 about providing your phone number to Sirius XM?

11 A. No, not ever.

12 Q. Okay. So going back to where --
13 before you made your statement, I was asking you
14 where you actually kept Defendant's Exhibit 5.
15 Is that in that folder in your bedroom?

16 A. Yeah, I'm sure it is.

17 Q. Okay.

18 A. Sure.

19 Q. How large is the folder? Is it, you
20 know --

21 A. It's quite thick. It's larger than
22 the binder that you have in front of you.

23 Q. Okay. So 5 inches? 7 inches?

24 A. Yes.

25 Q. Okay. The binder is not on video, so

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2 I wanted to describe it for the record.

3 A. Yes. Sure.

4 Q. Okay. When it comes to -- let's go
5 back to your purchase of the Odyssey van.

6 What features of the vehicle were
7 important to you? What mattered most?

8 A. That's a good question.

9 Q. Thank you.

10 A. I would say, first of all, it had to
11 be a van. Second of all, it had to be a -- not a
12 late model, this year or last year van. We're
13 looking for something that didn't have a lot of
14 whistles and bells on it. So -- and it -- and
15 primarily the other thing that we looked for is
16 it had to have third row seating inside.

17 Q. Okay.

18 A. As -- as far as GPS navigation,
19 satellite radio, you know, the frills, we
20 could -- we could have cared less.

21 Q. Okay. So as far as those extra
22 features of the car, the Buchanans just
23 personally, they don't care for those?

24 A. No.

25 Q. All right. So you were more

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2 interested, as you've said, in the vintage of the
3 car, what year it was, and making sure you get
4 that third row?

5 A. Yes.

6 Q. And that it be a van?

7 A. Yes.

8 Q. All right. But, of course, there are
9 others that -- not the Buchanans -- who do care
10 about the bells and whistles, as you've put it,
11 correct?

12 MR. ELLZEY: Objection. Form.

13 A. I assume so, yes.

14 Q. Who might be very interested in a
15 feature of the purchase such as OnStar?

16 MR. ELLZEY: Objection.

17 A. There are many people who like to
18 waste their money, yes.

19 Q. Your opinion about that is clear, and
20 I hear you.

21 A. Okay.

22 Q. Okay. So -- but there are those
23 people, right?

24 MR. ELLZEY: Objection. Form.

25 A. Yes.

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2 Q. And there are those people, too, who
3 do want the selection of music stations that
4 Sirius XM offers, correct?

5 MR. ELLZEY: Objection. Form.

6 A. That's correct.

7 Q. All right. Anything else that you
8 and Mrs. Buchanan were looking for in terms of
9 your approach and your attitude about buying the
10 Odyssey van?

11 A. Just a good, solid van, well made
12 that had comfortable seats, third row seating and
13 seats that would go down inside the floor were
14 what we primarily looked for.

15 Q. Okay.

16 A. I mean, there might have been one or
17 two other issues or features, but certainly not
18 satellite radio.

19 Q. How about -- I mentioned OnStar.
20 Have you ever used OnStar?

21 A. No.

22 Q. Okay.

23 A. I would never use OnStar.

24 Q. I think I could have predicted that.

25 A. Okay.

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2 MR. ARMSTRONG: Can I give you this?

3 I'm not --

4 Can we mark that, please. That
5 should be 6.

6 (Exhibit 6 was marked.)

7 Q. Okay. For the record, we've marked a
8 document that's titled "Plaintiff's Objections
9 and Answers to Sirius XM's First Set of
10 Interrogatories." And my first question,
11 Mr. Buchanan, is, have you ever seen this
12 document before?

13 A. I don't know that I have or haven't.
14 It looks familiar, but I can't swear to it.

15 Q. Okay.

16 A. When you have as many legal law firms
17 involved in a case, there have been numerous
18 documents going back and forth.

19 Q. Okay. Who -- who have you -- which
20 lawyer or lawyers have you dealt primarily with?

21 A. Primarily with Jarrett at my request.
22 I don't want to know and don't -- have not asked
23 and have no need to know, nor do I want to know
24 the interactions that his firm is having with the
25 other ones because they each play a very

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2 important role, and I don't care to get into the
3 nitty gritty.

4 Q. Who -- who -- who did you hire?

5 A. I hired Jarrett.

6 Q. Okay. So you initially didn't hire
7 any other firm?

8 A. Oh, ab- -- no.

9 Q. Okay. How did the other firms get
10 involved?

11 MR. ELLZEY: Hold on. We're getting
12 real close to --

13 MR. ARMSTRONG: All right. Let me --
14 let me try it this way.

15 MR. ELLZEY: Okay.

16 MR. ARMSTRONG: Well, I think I got
17 it.

18 Q. So you yourself did not reach out to
19 these other firms, correct?

20 MR. ELLZEY: Objection. Form.

21 A. Prior -- prior to Jarrett, I have
22 reached out to a number of law firms across the
23 country.

24 Q. I mean the firm -- can you tell me
25 the names of the firms -- without looking at a

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2 document --

3 A. No.

4 Q. -- that represent you now?

5 A. Oh, Jarrett.

6 Q. Other than Jarrett?

7 A. Yeah, I -- I have a list at home.

8 Q. No, I'm saying, you can --

9 A. I mean, I -- no, I cannot recall off
10 the top of my head, no, but, yes, I'm aware of
11 who they are.

12 Q. Okay. So initially you retained
13 Jarrett's firm, correct?

14 A. Yes, with the assumption that Jarrett
15 and I would build a team of firms and attorneys
16 to get this brought to court.

17 Q. Okay. Number 10, so if you turn to
18 page -- the bottom it has Page 7 of 10.

19 A. Okay.

20 Q. And the question was to identify all
21 persons whom you believed to be witnesses who can
22 corroborate any of the allegations made in the
23 complaint, including any person whom you intend
24 to call as a fact witness in this litigation.

25 Do you see that?

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2 A. Yes.

3 Q. Okay. So you identified yourself and
4 others at Sirius, but you also identified Deborah
5 Buchanan, right?

6 A. That's correct.

7 Q. And what information does
8 Mrs. Buchanan have that can corroborate your
9 allegations in the complaint, if any?

10 A. I informed her of the phone calls
11 that I received.

12 Q. Okay.

13 A. I kept her abreast at a very broad
14 level. She has very limited knowledge as to the
15 workings of this. She has knowledge that, A, we
16 received numerous phone calls at home. She has
17 knowledge that I went to the local police
18 department and had them verify who was calling
19 our home, and she has knowledge that I have --
20 I've documented a number of the phone calls that
21 I received that Sirius made to my home.

22 She also has knowledge at a broad
23 level that I intend on prosecuting the
24 corporation or the individual that have made
25 these phone calls. As far as specifics, she

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2 doesn't have a lot of detailed knowledge.

3 Q. Is it fair -- is it fair to say that
4 her knowledge, what she does know, is all
5 derivative of what you know?

6 A. It's -- it's what I've told her, yes.

7 Q. Right. I'm trying to figure out
8 what -- sort of in broad strokes what we need to
9 ask her about.

10 A. Okay.

11 Q. And so am I right that any
12 information she has about this case or the
13 dispute has come from you?

14 A. That is correct.

15 Q. All right. Now, when you said you
16 intend to prosecute this corporation, what
17 exactly do you mean, Mr. Buchanan?

18 MR. ELLZEY: Objection. Form.

19 Q. You can answer.

20 THE WITNESS: I can answer?

21 MR. ELLZEY: You can answer, if you
22 know.

23 THE WITNESS: Okay.

24 A. And my broad answer is I intend on
25 building a legal team that I have done -- that

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2 has occurred and prosecuting this corporation not
3 only on behalf of myself, but hopefully at a
4 class action level to get this company to cease
5 their -- their poor business practices.

6 Q. Okay. And what --

7 A. And I might also add, I expect to be
8 issued a check.

9 Q. Any idea how much?

10 A. Oh, I --

11 MR. ELLZEY: Objection. Form.

12 A. I want as much as I can get. I
13 want -- I want all of the other people in this
14 class-action suit that they've done to -- to
15 receive checks to. This is unacceptable. It's
16 inexcusable to have 44 Attorney Generals go after
17 your corporation and to prosecute you and for you
18 to pay them millions of dollars and to not clean
19 up your business practices and to stop these
20 phone calls. It's unacceptable.

21 Q. Okay. So the business practices that
22 you'd like to see cleaned up are what exactly?

23 A. In my particular case, I have no
24 problem with Sirius XM trying to sell their
25 product to new car owners. I would like to see a

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2 forum where there is a check box when you buy the
3 vehicle or you initial it saying, I would like to
4 sign up for the 30-day or the 90-day or the
5 six-month free trial program and let the consumer
6 choose.

7 But for your corporation to start
8 making millions of phone calls to private owners,
9 to private residences without their permission,
10 without ever requesting a free service, it's
11 unacceptable.

12 Q. Okay. Have you ever -- have you
13 talked to anybody else who is potentially in the
14 class you'd like to represent?

15 A. I have not, no.

16 Q. In 14, it says, "Plaintiff has not
17 filed any petition for bankruptcy." This is on
18 Page 8.

19 A. Page 8?

20 Q. Yeah, Page 8 at the bottom, but the
21 number of the interrogatory is No. 14.

22 A. Okay. Sure.

23 Q. Did you ever see this answer to this
24 question?

25 A. I did.

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2 Q. And that is the answer that you have
3 not filed any petition for bankruptcy?

4 A. That's correct.

5 Q. But that's false, right?

6 A. That -- that is incorrect as I stated
7 it, yes.

8 Q. Okay. What's incorrect about it?

9 A. There are two instances where --
10 well, and I'm still not quite sure if -- I'm
11 still not quite sure if what I did is defined as
12 filed a petition for bankruptcy and gone through
13 the process.

14 I have two occasions where on the --
15 the first occasion is I went and retained an
16 attorney because we had a situation where the
17 mortgage company, GE Capital, could not produce
18 an accurate coupon book that went on for a period
19 of three years.

20 Q. Right.

21 A. And I recorded the phone calls that
22 I -- that we made, both my wife and I, to GE
23 Capital representatives who they said, oh, we'll
24 take care of it, it's an oversight on our part,
25 we'll fix it and re-issue you a coupon book. We

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2 apologize so sincerely, and this went on for
3 three years.

4 And finally I drew a line in the sand
5 and I said, you know, enough is enough. I'll go
6 get an attorney, because at that point I had had
7 all the written communications back and forth
8 documented. I had recorded phone calls where I
9 had tapped my own phone. I put the box on the
10 attorney's desk, and I said, this is the
11 situation. What do you recommend?

12 And he said, Mr. Buchanan, I would
13 recommend that we go ahead and litigate this, and
14 in order to do that, we may need to file the
15 bankruptcy petition, but we may withdraw it, and
16 I really -- since that occurred 20 or 25 years
17 ago, I didn't know if we had actually gone all
18 the way through the process.

19 I know -- I can tell you that GE
20 Capital responded by me getting an attorney and
21 threatened to accelerate the note because I
22 stopped making payments purposely. And I said,
23 until I receive an accurate coupon book, you will
24 not receive another dollar.

25 They accelerated the note. I had my

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2 attorney -- I had my attorney take over at that
3 point. He said, I want you to let them go ahead
4 and sell your home on the courthouse steps, at
5 which point, step back and I'll -- I'll take
6 over. And we did, and at that point it was a lot
7 of game playing, legal maneuvering, and
8 30 seconds before we walked into the courtroom to
9 have the case heard, the attorney for GE Capital
10 said, no, we'll settle this out of court. The
11 Buchanans will get their house back and, you
12 know, so that was the first instance.

13 Did -- I don't recall if we actually
14 went all the way through the bankruptcy process.
15 I don't know if your question in -- I didn't know
16 if your question in 14, "Have you ever filed a
17 petition for bankruptcy," I was unclear as to how
18 to answer that because I'm still to this day not
19 sure if we went all the way through the process.

20 The second occasion is when my wife
21 was having the mechanical issues with the car, I
22 looked at her and I said, we're going to go buy a
23 car, brand-new car. We went, we looked, we
24 picked one out, and I even told the salesman, I
25 said, I don't want to know the name of your

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2 service manager, I don't want to see the inside
3 of your service bay for a year. I don't want any
4 problems with this vehicle.

5 Within several days, the vehicle that
6 we had purchased was taken back to their service
7 department, and for approximately a 30-day
8 period, it was in their possession more than it
9 was in ours being fixed.

10 Q. Right.

11 A. At which point I looked at my wife
12 and I said, you know, we're not -- we're not
13 going to keep the vehicle.

14 So we had it cleaned, we drove it
15 back to the dealer, we handed them the keys and
16 said, you keep the vehicle, and they said, no,
17 you can't do that. And I said, I just did, and
18 they said, well, we'll -- you know, we'll
19 prosecute you, we'll come after you for full
20 payment, at which point I said, make my day. And
21 they did, and I -- I filed the -- I believe I
22 filed the petition for bankruptcy, but I'd --
23 again, that was 20 or 25 years ago.

24 I think at that point they backed up
25 and it was dismissed with or without prejudice,

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2 or whatever the legal term is.

3 So I probably did not answer that
4 correctly when I was asked, but I mean, my wife
5 even had to remind me at some point that we had
6 filed -- at least initially filed the papers for
7 bankruptcy. But again, I've -- I would have to
8 check the record. I'm sure you can and have as
9 to whether or not we actually went through the
10 whole process.

11 (Exhibit 7 was marked.)

12 Q. All right. For the record, we've
13 marked as Defendant's Exhibit 7 a document titled
14 "Petition, Small Claims Case" bearing Bates
15 stamp -- well, it has various plaintiff's Bates
16 stamp. I'm not going to ask you about the entire
17 document, just several portions. Feel free to
18 look at the whole thing, Mr. Buchanan.

19 (Witness reviewing document.)

20 Q. Oh, you're waiting on me. So you
21 recognize this petition, correct?

22 A. Yes.

23 Q. And this first page -- this first
24 page that we're looking at contain your
25 handwriting?

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2 A. Yes.

3 Q. And do you see there's a box you can
4 check to give your consent to be sent by email
5 address to you?

6 A. Yes.

7 Q. And is that your email?

8 A. Yes.

9 Q. And that's thomasfbuchanan@gmail.com?

10 A. Yes.

11 Q. And the emails that were sent to you
12 by Sirius XM, were they sent to that email
13 address?

14 A. Yes.

15 Q. Have you, in the past five years,
16 used any other email address?

17 A. No.

18 Q. Okay. On the third page in, there's
19 a reference to nine phone calls.

20 Do you see that?

21 A. Yes.

22 Q. That's your handwriting, correct?

23 A. Yes.

24 Q. So as of the date of this document,
25 it bears a file stamp August 2nd, 2016, you're

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2 referring to only nine phone calls, correct?

3 A. That's correct.

4 Q. And why is that?

5 A. I don't -- I don't understand the
6 question, why is that.

7 Q. Well, you had been -- you told us
8 several times today that you had received not
9 only more phone calls than nine, but more phone
10 calls than 16, correct?

11 A. Correct.

12 Q. So why is it that you only put here
13 that you received nine phone calls?

14 A. Oh. Well, the answer is pretty easy.
15 The -- I was trying to keep the amount that I was
16 suing for under the judicial limit for that
17 court.

18 Q. Any other reason?

19 A. No.

20 Q. Okay. Let's go back to --

21 A. Well, no, let me -- let me further
22 clarify. And it was my intention after this case
23 was heard to go ahead and again sue for the
24 remaining phone calls.

25 Q. And when you say, "this case was

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2 heard," you're referring to the petition that's
3 Defendant's Exhibit 7?

4 A. That's correct.

5 Q. So what you were doing is in order to
6 stay under the jurisdictional limit, you were
7 splitting your claims?

8 A. That's correct. Yes.

9 Q. Okay. That ultimately was dismissed,
10 correct?

11 A. Yes.

12 Q. For violation of the jurisdictional
13 limit?

14 A. Yes.

15 Q. All right. Let's go back to
16 Defendant's Exhibit 1.

17 A. Okay.

18 Q. Okay. And here this is another
19 petition you prepared we looked at earlier?

20 A. Yes.

21 Q. And the total amount of damages
22 sought here is \$10,000?

23 A. Yes.

24 Q. And now you're up to 15 phone calls,
25 correct? At least that's what it says in the box

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2 on page 2, seeking \$500 per call, 15 phone calls
3 to date?

4 A. Yes.

5 Q. Okay. All right. If you'd turn --
6 keep turning the pages, please, until you get to
7 the document that bears Bates stamp SXM 002242.

8 A. Okay.

9 Q. All right. Do you have a -- do you
10 know what this document is?

11 A. It's a --

12 Q. Well, for the record, just so when
13 I'm reviewing it I know exactly what I'm talking
14 about, it has a letterhead of Thomas F. Buchanan
15 with your address, and it's dated August 1, 2016?

16 A. Uh-huh.

17 Q. Okay. Is this the request you sent
18 to Sirius XM requesting the do-not-call policy?

19 A. I would assume so. I can't tell by
20 the document that you've provided me.

21 Q. Well, the document I provided you is
22 what you provided me.

23 A. Okay.

24 Q. So I'm trying to see if you have a
25 copy that doesn't have the certified mail receipt

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2 and the other receipt blocking the text.

3 A. Okay. And I -- I would say more than
4 likely I do. I would have to check, but yes.

5 Q. Okay. Why on August 1, 2016, were
6 you requesting a copy of Sirius XM's do-not-call
7 policy?

8 A. Because I wanted to lit -- litigate
9 the corporation because in addition to the phone
10 calls that were not requested, there is a part of
11 the law that says that if I request a copy -- a
12 written copy of your do-not-call list -- or your
13 do-not-call policy and you fail to provide it, I
14 can also sue you for that infraction also.

15 Q. Okay. Did Sirius XM provide you a
16 copy of the do-not-call policy?

17 A. They did.

18 Q. And that was by -- by paper mail or
19 by email?

20 A. They provided it by U.S. Mail.

21 Q. Okay. The next page is a document,
22 do you see it says service ID number at the top?

23 A. Yes.

24 Q. Now, is this a form document or
25 something that you prepared?

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2 A. No, this is a document that I
3 created.

4 Q. Okay.

5 A. This is a document that I use in all
6 of my calls that I provide to the local police
7 authority to verify who's calling.

8 Q. When you say all of your calls, what
9 do you mean?

10 A. It means that when I initially
11 contacted the police department regarding these
12 phone calls and opened the case, I was told we're
13 too busy, we don't have time for this, we don't
14 have the resources, we don't have the money,
15 we're too busy catching bank robbers and child
16 abductors and whatever. And I said, Okay.
17 You've told me what you can't do. Now tell me
18 what you can do, what you would be willing to do.
19 And they said, Well, what do you mean? And I
20 said, Well, if I write five questions on a sheet
21 of paper, would you be willing to call the number
22 that called -- keeps calling my home and ask them
23 those five questions, and would you sign it and
24 date it? And they said, Well, sure, we can do
25 that. We -- we would be willing to do that. And

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2 I said, Fine. Then let's start there. And
3 that's how this form was created.

4 Q. I see. Do you believe that your
5 problems with receiving calls you did not ask for
6 are as grave as child abductions?

7 A. Given what I've gone through and the
8 over 3,000 phone calls that I've received to
9 date, I think it is just as bad, yes.

10 Q. Okay.

11 A. Yes, absolutely.

12 Q. You used the number 3,000. Where did
13 you get that number from?

14 A. That's the approximate total number
15 of calls that I have documented to date on a
16 spreadsheet.

17 Q. Have we seen that spreadsheet today?

18 A. I don't know if you have or not.

19 Q. Have you seen that spreadsheet today?

20 A. I have -- yes, I absolutely have seen
21 that spreadsheet this morning as of 6:30,
22 7 o'clock.

23 Q. Where?

24 A. On my laptop.

25 MR. ARMSTRONG: That hasn't been

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2 produced.

3 MR. ELLZEY: I think you have it.

4 The only spreadsheet I've seen, you have, I
5 believe.

6 MR. ARMSTRONG: 3,000 calls logged?

7 MR. ELLZEY: I don't recall seeing
8 that.

9 THE WITNESS: Well, may -- may I
10 interject here? The -- the -- what you have in
11 your possession is not what I have in my
12 possession in that mine is a living document of
13 these phone calls. Yours is a snapshot in time
14 from this date to this date of the calls. They
15 -- the spreadsheet that I provided my legal team
16 many months ago does not include everything to
17 date.

18 Q. This spreadsheet is a spreadsheet
19 that you provided to Mr. Ellzey?

20 A. Yes, absolutely.

21 Q. And it contains some -- let's put it
22 this way. It contains thousands of phone calls?

23 A. Absolutely. Yes.

24 MR. ARMSTRONG: We have not received
25 that.

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2 MR. ELLZEY: Well, we can discuss
3 that afterwards. I mean, I don't -- I don't know
4 if you've sent a request for documentation of
5 every call by every company, but to the extent
6 you have, I don't -- I mean, we'll produce it. I
7 have no problem. I believe we can. But I don't
8 remember receiving a spreadsheet with 3,000 calls
9 on it.

10 THE WITNESS: Yeah, I mean, I -- I
11 would assume -- and I'm guessing here, but I
12 would assume that the spreadsheet that I actually
13 sent probably only had at that point 2,000 calls,
14 not 3.

15 Q. And these are 2,000 calls from Sirius
16 XM?

17 A. No, absolutely not.

18 Q. Okay. So these are calls from Sirius
19 XM and others?

20 A. These are phone calls that come in to
21 my home on my landline. Excluding family,
22 friends, business acquaintances, these are
23 unwanted calls who are selling doors, windows,
24 siding. These are people spoofing phone numbers.
25 These are people -- these are obscene calls.

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2 They -- they range the spectrum.

3 Q. Okay. To the extent that you've
4 brought any lawsuits or small claims petitions
5 against any of these entities, we've already
6 discussed that today?

7 A. Yes.

8 Q. Okay. So the handwriting on this --
9 this document that we were looking at -- and this
10 is Defendant's Exhibit 1. We were on the page
11 with the four questions. Remember?

12 A. Yes.

13 Q. All right. Whose handwriting is it
14 -- well, first, that's your signature at the
15 bottom, correct?

16 A. That is incorrect. Oh, well, yes,
17 that's my name, and that is my signature at the
18 bottom.

19 Q. Okay. The handwriting there that
20 answers the questions, whose handwriting is that?

21 A. That is the officer that made the
22 phone call to acquire the answers to the
23 questions.

24 Q. Okay. And -- and whose handwriting
25 is on the bottom? Is that the officer?

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2 A. That's his signature along with his
3 -- I believe that's his badge number. I'm not
4 sure.

5 Q. Okay. Do you know what his name is?

6 A. Whatever is there. It looks like
7 Stoneberg.

8 Q. All right.

9 A. I mean...

10 Q. When he -- so he -- he -- your
11 testimony is that he made a call to the number
12 that you asked him to make a call to, and then he
13 filled in the information responding to these
14 questions?

15 A. He made a call to (972) 437-8642 --

16 Q. Right.

17 A. -- and asked those four questions.
18 That's correct.

19 Q. Okay. And you were not on that call,
20 correct?

21 A. No, I was not on the call.

22 Q. I'm saying you didn't listen in with
23 him?

24 A. No, I did not.

25 Q. Okay.

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2 MR. ARMSTRONG: Ten minutes and we'll
3 take a break?

4 MR. ELLZEY: Yeah.

5 THE WITNESS: That sounds good.

6 MR. ARMSTRONG: You okay?

7 THE WITNESS: Yeah.

8 (Exhibit 8 was marked.)

9 Q. Okay. We've marked as Defendant's
10 Exhibit 8 a -- an email from Tom Buchanan to
11 Tyler Theis.

12 Have you ever seen this --

13 A. Yes.

14 Q. -- document before?

15 A. Yes.

16 Q. Okay. You prepared this, correct?

17 A. That's correct.

18 Q. And it was in connection with a
19 potential settlement of your dispute with Sirius
20 XM?

21 A. That is correct. That was -- Sirius
22 XM contacted me asking if I would be open to a
23 settlement.

24 Q. Right. And this is your response to
25 that?

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2 A. That is correct.

3 Q. Okay. The -- the -- you copy someone
4 there D -- or dragon@siriusxm.com.

5 Do you know who that is?

6 A. No, actually, I -- I don't.

7 Q. Okay. Here it's November 11, 2016,
8 correct?

9 A. That's correct.

10 Q. And you write, "I've just been
11 informed that I'm entitled to 13,000 per call in
12 damages times 15 calls is 195,000."

13 So as of this date, you are
14 discussing with Sirius 15 calls, correct?

15 A. That's correct.

16 Q. All right. Who informed you that
17 you're entitled to \$13,000?

18 MR. ELLZEY: Objection. Form. If
19 the lawyer told you that.

20 A. That was based on my own research.

21 Q. So you were informing yourself?

22 A. Sure.

23 Q. Okay. What research did you do?

24 A. Looking -- researching the -- the
25 laws and the damages that were appropriate based

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2 on the calls.

3 Q. Okay. And then you said -- and then
4 your cal -- by your calculation, you are entitled
5 to almost \$300,000, correct?

6 A. That's correct.

7 Q. But you were looking for a little
8 money to play blackjack with?

9 A. Sure.

10 Q. And you were willing to accept
11 \$10,000 in damages plus \$383.36 in court costs?

12 A. Yes.

13 Q. Okay. What did you mean on page 2
14 where you said if we reached a settlement that
15 you'd be willing to "waive prosecution of
16 individuals be jailed in the county jail for a
17 period of 180 days and fined \$2,000"?

18 A. It's my understanding based on some
19 of the laws that I've reviewed that these
20 individuals making these phone calls can be
21 personally prosecuted, jailed, and fined
22 individually.

23 Q. So you're willing to give that up for
24 a little money to play blackjack?

25 A. I'm willing to consider waiving that.

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2 At that time I was.

3 Q. On the first page, you write, "In my
4 opinion, this case should never come before the
5 Judge."

6 Why did you write that?

7 A. I clearly felt that I had a very
8 strong case that should have been settled out of
9 court. There's no need to waste the Court's --
10 Court's time in litigating this. This matter
11 should be settled out of Court. Even this case
12 before us today in this meeting, this should be
13 -- this should never come before a Judge. That's
14 ridiculous.

15 Q. But no part of your response on
16 settlement included any change to the defendant's
17 business practices, correct? I thought that's
18 what you were concerned about.

19 A. I think the assumption is that
20 they'll change their business practices.

21 Q. But you didn't write that in your
22 response?

23 A. Did I write that in print, no. Is
24 that a big deal to me, absolutely. Sure, the
25 money is important. But you know what? The

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2 business practice piece of it is just as
3 important.

4 Q. And even though it's just as
5 important, you didn't include it in your email?

6 A. Again, that's an assumption that this
7 will not continue.

8 MR. ARMSTRONG: All right. Let's
9 take that break.

10 MR. ELLZEY: What kind of break are
11 you talking about? Are we talking about a full
12 lunch, or do you want to keep going?

13 MR. ARMSTRONG: Yeah, I think we
14 should.

15 MR. ELLZEY: Okay.

16 MR. ARMSTRONG: And then that'll
17 allow me to try to be more --

18 MR. ELLZEY: Yeah, that's fine.

19 MR. ARMSTRONG: -- efficient and go
20 through this stuff.

21 MR. ELLZEY: Sure.

22 THE VIDEOGRAPHER: We are off the
23 record at 11:26 a.m.

24 (Break from 11:26 a.m. to 11:43 a.m.)

25 THE VIDEOGRAPHER: This is the start

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2 of media labeled No. 3 of the video recorded
3 deposition of Thomas Buchanan. We are on the
4 record at 11:43 a.m.

5 Q. (BY MR. ARMSTRONG) Mr. Buchanan, you
6 mentioned earlier a settlement that you reached
7 with a company where you were paid \$3,500 in
8 connection with do-not-call claims?

9 A. Yes. Yes.

10 Q. Okay. What -- do you remember the
11 name of that company?

12 A. I don't off the top of my head.

13 MR. ARMSTRONG: Where is the --
14 excuse me.

15 THE WITNESS: Sure.

16 MR. ELLZEY: Lee, can I ask real
17 quick if you're planning on getting into terms of
18 the settlement with the company? I don't want
19 him to violate any confidentiality clause that
20 will --

21 MR. ARMSTRONG: We'll take it one
22 step at a time.

23 MR. ELLZEY: Okay. All right.

24 MR. ARMSTRONG: Sure. We'll go slow.

25 MR. ELLZEY: All right.

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2 Q. Just give Jarrett a chance when I ask
3 you a couple of questions about the settlement to
4 just wait, what I'm asking and whether or not you
5 are --

6 THE WITNESS: Okay.

7 MR. ARMSTRONG: -- protected. Okay?

8 A. All right.

9 Q. Was the company Americraft Siding &
10 Windows?

11 A. Yes.

12 Q. All right. Did you enter into a
13 written -- a written settlement?

14 A. Yes.

15 Q. Does it contain a confidentiality
16 clause?

17 A. I believe that it does, yes.

18 Q. Okay. Does it --

19 MR. ARMSTRONG: I guess you'll have
20 to instruct or something, but I --

21 Q. Where is that settlement? Where is
22 that document?

23 A. It's filed in the Court.

24 Q. The settlement agreement itself is
25 filed in court?

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2 A. Yes.

3 MR. ARMSTRONG: He may be wrong about
4 that. So why don't we take a look at it. I want
5 to ask if you -- I just really want to ask one
6 thing.

7 MR. ELLZEY: Okay.

8 Q. As part of the settlement -- and then
9 give Jarrett a chance to --

10 A. Yeah.

11 Q. -- think about it.

12 As part of the settlement, did it
13 include promises by the company to change its
14 business practices?

15 MR. ELLZEY: I'm going to object for
16 the record to the extent that there's a
17 confidentiality clause in your settlement
18 agreement that you not violate it by discussing
19 the terms of the settlement agreement.

20 A. Okay. And my response is I really
21 don't feel comfortable answering the question
22 based on the agreement that I signed.

23 Q. All right. Well, we'll -- we'll take
24 that up privately then. I'll leave the agreement
25 alone. Prior to reaching the agreement, did you

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2 insist that one of the conditions be that this
3 company change its dialing practices?

4 A. I made it quite clear that I wanted
5 them to change the way they do business, I think,
6 would be a good way to characterize it.

7 MR. ARMSTRONG: Okay. All right.
8 Well, we'll just have to -- we'll -- we'll
9 discuss the agreement offline.

10 MR. ELLZEY: That's fine.

11 Q. (BY MR. ARMSTRONG) Okay. Have you
12 ever answered a call on your landline and asked
13 the caller not to keep calling?

14 A. Absolutely. Numerous times.

15 Q. You never did that with Sirius XM
16 because you never got to the phone in time,
17 right?

18 A. I never talked to a human being from
19 Sirius. That's correct.

20 Q. Okay. Have you ever sent -- other
21 than the letter that you claim you sent in this
22 case to Sirius XM requesting that they not call
23 you any longer, have you ever sent a similar
24 letter to any other company?

25 A. Absolutely.

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2 Q. Did you turn those letters over to
3 your counsel?

4 A. That's a good question. I -- I can't
5 answer that.

6 Q. Okay.

7 A. I don't know if I did or not.

8 Q. Okay. How many times have you done
9 that?

10 A. Several.

11 Q. Several as in three? As in five? As
12 in two?

13 A. Under ten. Other than that, I -- I
14 don't know.

15 Q. You kept them, though, in that file
16 you mentioned, right?

17 A. Yes. I would say that I've either
18 got them -- yeah.

19 Q. Okay. You -- you -- do you intend to
20 be the class representative?

21 A. I hope to be, yes, absolutely.

22 Q. And can you tell me what you
23 understand your responsibilities as class
24 representative to be?

25 MR. ELLZEY: Objection. Form.

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2 Q. Do you have any understanding as to
3 what you're supposed to do as class
4 representative?

5 A. I'm to be the primary litigant.

6 Q. And what does that mean?

7 A. I am to represent the other people in
8 the class that they've done this to.

9 Q. Anything else?

10 MR. ELLZEY: Objection. Form.

11 A. Nothing comes to mind at the moment.

12 Q. I noticed on your -- you -- I have a
13 resumé -- what appears to be a resumé. It's a
14 multi-page document. I'm going to show it to
15 you.

16 A. Sure.

17 (Exhibit 9 was marked.)

18 (Sotto voce discussion.)

19 Q. Okay. So we've marked as Defendant's
20 Exhibit 9 a multi-page document. It appears to
21 be a resumé of sorts for Tom Buchanan bearing
22 Bates Buchanan 10 through 18.

23 Mr. Buchanan, this is a document that
24 you prepared?

25 A. Yes.

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2 Q. Okay. And am I right? Is it
3 essentially a resumé?

4 A. Yes.

5 Q. And it contains the various
6 employment that you've been engaged in throughout
7 your career?

8 A. That's correct.

9 Q. And is it -- without me asking you
10 about every single one of the jobs, is it -- is
11 it accurate as far as know?

12 A. To the best of my knowledge, it's
13 accurate, yes.

14 Q. Okay. I see references in here at
15 times to customer service and call centers.

16 Did you ever make phone calls to
17 consumers?

18 A. Oh, absolutely not, no.

19 Q. Okay. Did you ever work on
20 technology that allowed contact to be made to
21 consumers without human intervention?

22 A. No.

23 Q. Okay. Do you see page Buchanan 12?

24 A. Yes.

25 Q. There's a reference to Daily Market

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2 Data?

3 A. Yes.

4 Q. And it says, among other things, that
5 you undertook doing -- to -- you reformatted data
6 and "had the system automatically email each data
7 file using STMP to a subscriber base without
8 human intervention."

9 Do you see that?

10 A. Yes.

11 Q. So is it true -- did you -- were you
12 involved in doing that?

13 A. Yes.

14 Q. Okay. What exactly did you do?

15 A. That is a process by which I used
16 task manager or task scheduler inside Windows to
17 send raw data files to one or more individuals.

18 Q. These individuals were subscribers,
19 right?

20 A. No, absolutely not.

21 Q. Well, you write here "to a subscriber
22 base."

23 A. Well, that's just my own terminology.

24 Q. So who were these individuals?

25 A. Was --

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2 Q. What relation were they to the
3 company Daily Market?

4 A. They are just friends who wish to
5 receive a data file.

6 Q. They're friends of whose?

7 A. Myself.

8 Q. Okay. Did you -- what is Daily
9 Market Data?

10 A. It is a -- it is a website that I
11 created that -- that basically provides stock
12 data, formatted stock data.

13 Q. Okay. So it provides formatted stock
14 data. And how does an individual receive that
15 stock data. How did they?

16 A. Well --

17 Q. Well, let me withdraw the question.
18 It says stocks data, if you're being accurate
19 here, was sent automatically to individuals
20 without human intervention. Right?

21 A. That's correct.

22 Q. And did you receive written consent
23 from all the individuals to receive this data?

24 A. I received verbal consent, yes.

25 Q. Just listen to my question.

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2 Did you receive written consent?

3 A. No.

4 Q. Okay. How -- how -- you reference a
5 subscriber base. How many individuals are we
6 talking about?

7 A. Oh, my. Two, three.

8 Q. Two or three people?

9 A. Yes. I mean, we're not talk -- this
10 -- this was -- this was programmed by me
11 primarily for me, and several of my friends found
12 out that I was interested in this project, doing
13 this project, and they said would you share some
14 formatted data files. And I said, sure, I'll
15 program that in. This is not something that I'm
16 actively marketing nationwide, i.e., as in Sirius
17 XM and I've created products and I'm out selling
18 them and yada, yada, yada.

19 Q. Have you ever created products or
20 services and sold them to the public?

21 A. No.

22 Q. I see there's various -- throughout
23 your resumé, there's various references to
24 technology, whether it's Windows --

25 A. Yes.

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2 Q. -- and so you've used Microsoft
3 Office, right?

4 A. Yes.

5 Q. Okay. And that came -- at some point
6 when you were using it, came with a trial, did it
7 not?

8 A. Generally, no.

9 Q. Have you ever used -- if we were to
10 go back and look through all these records, would
11 we find that you had ever used a free trial of
12 any software?

13 A. I don't do trials. My overall
14 response would be no. If I'm interested in a
15 project or if I have a problem that needs a
16 solution, I generally go on the internet, search
17 out the software that I feel will solve the
18 problem that I'm trying to solve, go look at the
19 instructional tutorials to determine does it --
20 is it a good fit, and if it is, I go buy it.

21 Q. Even if -- even if it were offered as
22 a trial so you could better gauge whether it's a
23 good fit, you still would not sign up for the
24 trial; is that correct?

25 A. I generally do not, no.

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2 Q. Can you think of -- and you say
3 "generally." Can you think of any instance when
4 you indeed did sign up for a free trial of any
5 service?

6 A. Nothing comes to mind. The -- the
7 only possible thing that might come to mind is
8 Adobe, but I don't believe that's a subscription.
9 I think that's a free -- that's always been free.

10 Q. Okay. So Adobe, that is a software
11 that allows viewing of PDFs?

12 A. Yes.

13 Q. And you understand that even if it's
14 free that it comes with certain terms and
15 conditions?

16 A. Sure.

17 Q. And how would you find out what the
18 terms and conditions are?

19 A. You read them.

20 Q. Okay. And have you done that at
21 times?

22 A. Oh, absolutely.

23 Q. And do you believe that at any point
24 in your career you've had an existing business
25 relationship with Adobe?

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2 MR. ELLZEY: Objection. Form.

3 A. I would have to answer no.

4 Q. Okay. So even though you're using
5 their service and you understand there are terms
6 and conditions to that service, your answer is
7 that, no, you would not consider yourself to have
8 an existing business relationship with that
9 service, correct?

10 MR. ELLZEY: Objection. Form.

11 A. That's correct. I would not consider
12 myself to have a business relationship with
13 Microsoft, but I use their software daily.

14 Q. But just to close it out, I was
15 asking you about Adobe, correct? Same answer?

16 A. Same answer.

17 Q. Okay.

18 MR. ARMSTRONG: Okay. Let's mark
19 this.

20 (Exhibit 10 was marked.)

21 MR. ARMSTRONG: What is this, Kim?

22 THE REPORTER: 10.

23 Q. Okay. All right. We've marked as
24 Defendant's Exhibit 10, owner's manual to a 2011
25 Odyssey. And this was produced by you,

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2 Mr. Buchanan. Oh, this is important. This is
3 not the entire owner's manual. It is a very
4 lengthy document, so these are portions. I'm not
5 going to have many questions about it, but I just
6 wanted to make sure that --

7 A. Okay.

8 Q. -- you understood that. Okay?

9 THE WITNESS: Looks like a whole --

10 MR. ELLZEY: Do you know what's
11 missing?

12 THE WITNESS: Mainly its main --

13 MS. WAKS: I mean, it was a 700-page
14 document, sections that really didn't -- to other
15 parts of the car.

16 MR. ELLZEY: Okay.

17 Q. Okay. So where did -- so this came
18 from your files, Mr. Buchanan. Okay. You
19 produced this to us in -- in its full form, but
20 we just to save trees --

21 A. Yeah.

22 Q. Okay?

23 A. Okay.

24 Q. Where did you keep -- before you
25 produced this to us, where did you keep the

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2 owner's manual for the van?

3 A. It's kept in the vehicle, in the
4 glove box --

5 Q. I see.

6 A. -- I believe.

7 Q. Okay. And I noticed that various
8 sections --

9 (Sotto voce discussion.)

10 MR. ARMSTRONG: One second.

11 Q. Okay. Do you know if you ever -- I
12 just have one question. Do you know if you ever
13 read any sections in the owner's manual?

14 A. Oh, I'm sure we have, yes.

15 Q. Okay. Well, so can just help me
16 understand you better? Is it -- are you a
17 cover-to-cover person? You buy something, you
18 get an owner's manual, and then do you diligently
19 read?

20 A. Definitely not.

21 Q. Is it more as you have an issue with
22 respect to certain something, then you'll go
23 searching for that?

24 A. If I have a question about a feature,
25 I will go searching for it as to how to use it or

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2 what it does.

3 Q. Okay. So when you -- when you hit
4 the XM -- withdrawn.

5 Are you aware that there's a section
6 in here on satellite radio?

7 A. Yes.

8 Q. Okay. And did you -- when is the
9 first time you saw that?

10 A. When it was brought to my attention.

11 Q. What do you mean?

12 A. That's all -- that's the only way I
13 can answer that. I don't recall at what time
14 period or who brought it to my attention other
15 than I'm sure I saw the button on the dash and --
16 or my wife did, and we looked at each other and
17 said, What's that? Let's go get the owner's
18 manual.

19 Q. Okay. And you testified earlier that
20 it didn't work then when you -- the first time
21 you pushed the XM, and you said it still doesn't
22 work. Do you recall that?

23 A. It's my -- to -- to the best of my
24 knowledge, it's never worked, it doesn't
25 currently work, and I had no intention of dialing

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2 the 800 number to request that it be configured.

3 Q. Yeah, you probably want to call your
4 lawyer before you dial that 800 number.

5 MR. ELLZEY: Please do.

6 THE WITNESS: It will never happen.

7 MR. ELLZEY: We can arrange --

8 MR. ARMSTRONG: I'm sure -- I'm sure
9 it'll never happen. I don't know much, but that
10 I know.

11 MR. ELLZEY: It doesn't sound like
12 he's going to call it anyway.

13 Q. Okay. So -- so -- so am I right
14 then, you did try other times other than that one
15 time to press the button to see what happens?

16 A. To the best -- to the best of my
17 recollection, I pushed it once.

18 Q. Oh.

19 A. Okay.

20 Q. Okay. That's your recollection?

21 A. That's my recollection.

22 Q. Okay. And then when you -- to the
23 best of your recollection, when you consulted the
24 owner's manual about it, what do you remember?

25 A. Pretty much the owner's manual says

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2 it's satellite radio. If you want it configured,
3 dial this 800 number and give them some unique ID
4 number, and they'll flip a switch or turn it on,
5 and you can start playing the radio using
6 satellite radio.

7 Q. Okay. And that was of no interest to
8 you?

9 A. Absolutely not.

10 Q. Okay. You can put that aside.

11 MR. ARMSTRONG: This should be our
12 last hopefully for today. And it's the same for
13 this, right? This is not the full manual, or it
14 is.

15 MS. WAKS: It is.

16 MR. ARMSTRONG: Oh, it is. Okay.

17 (Exhibit 11 was marked.)

18 Q. So Defendant's Exhibit 11, which we
19 have marked, is a manual for a Honda 2011 Odyssey
20 Touring and Touring Elite, which is referred to
21 on the second page as a technology reference
22 guide. And you've seen this document before,
23 Mr. Buchanan, right?

24 A. Yes.

25 Q. It's a document you produced to us.

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2 It has Bates stamps on the bottom Buchanan 312
3 through 353. I noticed that -- and where --
4 where was this document kept before you produced
5 it to us or to your lawyer?

6 A. Inside the van. It's my
7 understanding she keeps it in the glove box, but
8 she may keep it somewhere else.

9 Q. Okay. I see that -- that -- like if
10 you'll look at page 314, so it's just three pages
11 in.

12 A. Okay.

13 Q. There look to be Post-Its on the
14 right-hand side of the document.

15 Do you see those little flags that
16 stick out?

17 A. Yes.

18 Q. Okay. Am I right that that's --
19 represents you or your wife flagging certain
20 parts of this manual? Is that fair?

21 A. I don't recall if she did it or if it
22 was that way when we purchased the vehicle. I
23 know I did not -- I -- to the best of my
24 recollection, I don't recall tabbing any -- any
25 pages in the documents.

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2 Q. Okay. Do you -- do you remember at
3 all looking at satellite radio literature within
4 this document, same way you described for the
5 owner's manual?

6 A. I actually don't have a recollection
7 of looking in here for that. So I'm not even
8 sure that this manual contains that. And
9 actually in flipping through the pages, I don't
10 think there's -- I would have to say I don't
11 believe that this document even covers satellite
12 radio on any of the pages. Now, I could be
13 wrong, but...

14 Q. Yeah. On page -- we don't need to --
15 page 19, there's a reference to XM and various
16 commands. But if you didn't see it, you didn't
17 tab it, then I don't need to ask you about it.

18 A. Page 9 -- 319?

19 Q. No, I'm sorry, I switched it up on
20 you. It's -- 332 is the Bates stamp.

21 A. Interesting. My response to your
22 question is I've -- I've not seen this before
23 today.

24 Q. Right. Okay.

25 MR. ARMSTRONG: Good. Okay. That's

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2 all the questions that I have for you,

3 Mr. Buchanan. Thank you very much.

4 MR. ELLZEY: I just have a couple of
5 follow-ups.

6 EXAMINATION

7 BY MR. ELLZEY:

8 Q. Mr. Buchanan, we've met before,
9 correct?

10 A. Yes.

11 Q. And is it true that I'm your
12 attorney?

13 A. Yes.

14 Q. Do you have other attorneys?

15 A. Yes.

16 Q. With respect to this case?

17 A. With respect to our team, yes.

18 Q. Correct. Has my office regularly
19 communicated with you about this case?

20 A. Absolutely.

21 Q. Have we communicated with you about
22 the developments in the case?

23 A. Yes.

24 Q. Do you understand what the discovery
25 process is?

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2 A. Yes.

3 Q. Is taking a deposition part of that
4 process?

5 A. Yes.

6 Q. You were shown some interrogatories
7 by Mr. Armstrong earlier. Do you recall that?

8 A. Yes.

9 Q. Did my office and did I personally
10 discuss those interrogatories with you?

11 A. You keep me abreast and communicate
12 very well with what's going on and the status.

13 Q. Well, I heard you say something
14 interesting earlier, and now it's -- I believe
15 your testimony was you didn't want to know about
16 what the litigation team was doing; you just
17 wanted to hear from me. Do you recall --

18 A. Yes.

19 Q. -- that?

20 But that didn't mean that you didn't
21 want to be involved in the process?

22 A. Oh --

23 MR. ARMSTRONG: Object to the form.
24 Leading.

25 You can answer.

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2 A. No, that -- that absolutely does not
3 mean I want to -- I do not want to be involved in
4 the process. It means I want a -- one individual
5 to be my lead attorney that will coordinate all
6 of the other teams and legal firms that are
7 associated with this, and I communicate through
8 you to them and vice versa.

9 Q. Did you authorize my firm to pick the
10 law firms that were going to be involved in the
11 case?

12 A. Absolutely.

13 Q. Did we clear it with you before --

14 A. Sure.

15 Q. -- we decided retain those law firms?

16 A. Sure.

17 Q. Do you understand that this case
18 could go to trial?

19 A. Yes.

20 Q. Do you understand that a case like
21 this could take two weeks or more to try?

22 A. I don't care if this takes two months
23 to try, that's --

24 Q. Are you willing -- I'm sorry. Are
25 you willing to participate in trial as the lead

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plaintiff if this case goes to trial?

MR. ELLZEY: Nothing further.

THE VIDEOGRAPHER: We are off the
record at 12:09 p.m.

THOMAS BUCHANAN

C E R T I F I C A T E

I, Kim A. McCann, RMR, CRR, CSR in and
for the State of Texas, do hereby certify:

That THOMAS BUCHANAN, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness;

That pursuant to FRCP Rule 30,
signature of the witness was not requested by the
witness or other party before the conclusion of
the deposition;

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this May 15, 2018.

Kim A. McCann, RMR, CRR, CSR

Deponent: THOMAS BUCHANAN

Pg.	Ln.	Now Reads	Should Read	Reason
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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS _____ DAY OF _____, 20____.

(Notary Public) MY COMMISSION EXPIRES: